

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY, AS)
SHE IS THE ADMINISTRATRIX OF THE)
ESTATE OF AWILDA SANTIAGO, ESSEX)
PROBATE COURT DOCKET #03P-2499AD1,)
P/P/A VERONICA ROSARIO AND)
CHRISTINA SANTIAGO, AND AS)
SHE IS THE ADMINISTRATRIX OF THE)
ESTATE OF JOSE SANTIAGO, BERLIN) Civil Action #05-CV-10617MLW
(CONNECTICUT))
PROBATE COURT, CASE #03-0713)
Plaintiff)
)
v.)
)
RARE HOSPITALITY INTERNATIONAL, INC.)
d/b/a LONGHORN STEAKHOUSE)
Defendant)

AFFIDAVIT OF ALBERT L. FARRAH, JR.

1. My name is Albert L. Farrah, Jr. at all times pertinent hereto, I have been counsel to the plaintiffs in the above matter.
2. Attached hereto are copies of the following documents:
 - A. Handwritten statement of Jude Connelly dated November 3, 2003;
 - B. Deposition of Jude Connelly dated August 19, 2004 in the matter of Nancy Rosario, et al v. Jeffrey Southworth, et al, Middlesex Superior Court C.A. #03-4704L2;
 - C. Deposition of Jude Connelly in this action dated February 10, 2006;
 - D. Handwritten statement of Leigh Chabot dated November 2, 2003;
 - E. Portions of the deposition of Leigh Chabot in this action dated March 10, 2006;
 - F. Portions of the deposition of Thomas Espey dated June 22, 2004 in the

matter of Nancy Rosario, et al v. Jeffrey Southworth, et al, Middlesex Superior Court C.A. #03-4704L2;

G. Portions of the deposition of Michael Espey dated June 22, 2004 in the matter of Nancy Rosario, et al v. Jeffrey Southworth, et al, Middlesex Superior Court C.A. #03-4704L2;

H. Portions of the deposition of Kristen O'Donnell in this action dated December 28, 2005;

I. Portions of the Longhorn Steakhouse Bar Recipes, Revised 2002;

J. Longhorn Steakhouse Audit Report dated September 26, 2003;

K. Affidavit of Jude Connelly dated May 6, 2005 in the matter of Nancy Rosario, et al v. Jeffrey Southworth, et al, Middlesex Superior Court C.A. #03-4704L2; and

3. Attached hereto as Tab L is various correspondence between my office and that of RARE's attorney regarding the deposition of John DiNatale. From the outset, Mr. Gillis made it clear to me that he would not produce Mr. DiNatale for deposition and as the attached correspondence shows, we agreed early on that he would file a motion for protective order.

4. I do not believe, given the obvious effect John DiNatale had on Jude Connelly's testimony, that there was any obligation on my part to specify why I believed I was entitled to take Mr. DiNatale's deposition, particularly since Mr. Gillis made it plain he was not going to produce Mr. DiNatale. Nevertheless, I regret the use of the expression "take a shot at" Mr. DiNatale.

5. The reasons supporting plaintiff's claim she has a right to depose Mr. DiNatale are fully set in the accompanying memorandum.

Signed under the pains and penalties of perjury this 15th day of August, 2006.



ALBERT L. FARRAH, JR., ESQ.

CERTIFICATE OF SERVICE

SUFFOLK, SS

August 15, 2006

A copy of the Affidavit of Albert L. Farrah, Jr. was today mailed, postage prepaid to Michael Gillis, Esq., Gillis & Bikofsky, P.C., 1150 Walnut Street, Newton Highlands, MA 02461.



Albert L. Farrah, Jr., Esq.

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Albert L. Farrah, Jr., Esq.

GRAND JURY
EXHIBIT

18

11/5/03 re

Jude Connelly - Jude Connally

521-63-8137

DOB - 3/23/85

Nov. 2nd, 2003 3:25 pm

We were dirtbiking in Templeton, Ma at the sand pits. When it got dark, we left Templeton. Scott espey drove from templeton to the Long Horn resturaunt in Leominster, Ma. We arrived there around 8:30. We waited for a table and around 9:00 pm we were seated. We had dinner. Jeff had a couple beers (maybe 2) and maybe 3 drinks with Jack Daniels with dinner. At around 11:00 pm when the resturaunt was closing we left. We went from the long horn to the Four seasons hotel I believe (over RMV in Fitchburg). We stayed there for maybe 15-20 min. Scott drove from the longhorn to the hotel and then to the Other Side. Scott, Jeff, and I dropped one of the others off at the long horn with the others. Then Scott drove Jeff and I with the 2 dogs to Pond view Apartment homes in Littleton, Ma by the 495 exit. We unloaded our stuff (me, scott) and Jeff left with his 2 dogs. We realized we did not have the keys so we called Jeff. I got through to him and he said that he would turn around to bring us the keys. We waited maybe 15-20 min and Jeff had not shown up. We called him again and got through. He said he was alright, but he was in an accident and to come get him. We had to break a window out in Scott's truck to get

On the south side, we turned around in Westford headed south. We saw lots of police cars and emergency vehicles, we could not see any thing that looked like a Jeeps truck. We could not see any vehicles off the road. We decided not to stop and we then we back to Harvard where I was dropped off.

Handwritten

1 in her own name and as administratrix of her
 2 daughter's estate against Jeffrey Southworth
 3 and Enterprise Rent-a-Car of Boston.

4 And I'm going to be asking you some
 5 questions, and Mr. Sullivan and Mr. Lane may
 6 ask you some questions as well. If you don't
 7 understand any questions that I ask or they
 8 ask, please let me know, and I'll try to
 9 rephrase it. If you need a break, let me know,
 10 and you can have a break.

11 At the end of the deposition, the
 12 transcript of your testimony, which is what is
 13 happening right now, will be sent to you, and
 14 you'll have 30 days to review it for accuracy.
 15 And to the extent there are any, make a list of
 16 inaccuracies on a sheet of paper, sign that
 17 sheet, and send it back.

18 If we don't get it back from you
 19 within 30 days, we're going to, for the
 20 purposes of this lawsuit, deem that the
 21 transcript was satisfactory to you and then use
 22 it for whatever purposes transcripts are used
 23 for in lawsuits. Is that all okay for you?

24 A. Yeah.

1 Q. Great. All right. Where do you
 2 live?

3 A. Harvard, Mass.

4 Q. What is your address?

5 A. 15 Lovers Lane.

6 Q. And how old are you?

7 A. 19.

8 Q. Your date of birth is what?

9 A. 3/23/85.

10 Q. Are you working or going to school
 11 right now?

12 A. Ah, I do both. I haven't started
 13 school.

14 Q. Where are you working right now?

15 A. In Fitchburg at Napa Auto Parts.

16 Q. Does Scott Espy work at Napa Auto
 17 Parts?

18 A. No.

19 Q. Does his brother work at Napa Auto
 20 Parts?

21 A. No.

22 Q. How long have you worked there?

23 A. I've worked there probably three
 24 months.

5

1 Q. And where did you go to school?

2 A. I go to school -- actually, I'm in
 3 between schools right now, I used to go to
 4 UMass Lowell. Now I'm transferring to Mount
 5 Wachusett.

6 Q. Mount Wachusett College?

7 A. Yes.

8 Q. Where is that?

9 A. It's in Gardner, Mass.

10 Q. Will you be boarding or a day
 11 student?

12 A. I'll be a day student.

13 Q. Have you completed enough credits to
 14 finish your freshman year?

15 A. Ah, I don't actually know. No, I
 16 don't think so. I think I'm a little bit
 17 short.

18 Q. Is it accurate to say that you
 19 attended UMass Lowell from September of 2003 to
 20 sometime in 2004?

21 A. Yes.

22 Q. And you graduated from Harvard High
 23 School; is that right?

24 A. Yeah. It's actually called The

6

1 Bromfield School.

2 Q. What year did you graduate from The
 3 Bromfield School?

4 A. 2003.

5 Q. Okay. For how long have you known
 6 Jeffrey Southworth?

7 A. Ah, known him about two years maybe.

8 Q. Okay. So that would bring us back to
 9 summer of 2002, more or less; is that right?

10 A. Yes.

11 Q. You didn't know him prior to that, as
 12 best as you can recall?

13 A. No, I didn't. I mean, I'd heard of
 14 him, but I never really met him.

15 Q. What had you heard of him before you
 16 met him?

17 A. Well, I just heard he used to go to
 18 our school, and he lived in Harvard for some
 19 time, and then he moved out.

20 Q. Your school is The Bromfield School?

21 A. Yes.

22 Q. Did you hear before you met him that
 23 he had been expelled from The Bromfield School?

24 A. No.

7

1 Q. Did you subsequently come to learn
2 that he had been expelled from The Bromfield
3 School?

4 A. No.

5 Q. Okay. Do you recall the
6 circumstances of your first meeting with
7 Jeffrey Southworth?

8 A. Not really. I mean, I can tell you
9 that it's most likely we were going
10 dirt-biking. I was going dirt-biking, and he
11 was there.

12 Q. Okay. You're pretty clear that the
13 first meeting had something to do with
14 dirt-biking; is that right?

15 A. Yeah. Well, I think the first time
16 that I was actually with him, just me and him,
17 you know, he called me up and asked me if I
18 wanted to go dirt-biking.

19 Q. But prior to that time, you had been
20 in a place where there was dirt-biking going on
21 and he was there as well as you and others; is
22 that right?

23 A. Yes.

24 Q. And approximately from the time that

9

1 wasn't very often.

2 Q. In addition to being in his company
3 and involved in dirt-biking activities, either
4 dirt-biking yourselves or going to dirt-bike
5 races as you just testified, were you in his
6 company in any other settings?

7 A. Very rarely. I mean, I was, but you
8 know, it was sort of, you know, I'd go to a
9 party, and he'd be there, and I'd see him. And
10 it wasn't like I was hanging out with him, but
11 he was there.

12 Q. Okay. And can you tell me where some
13 of the parties were that you saw him?

14 A. They were in Harvard. There weren't
15 very many of them. I just remember seeing him
16 at a few parties around town.

17 Q. This would have been sometime between
18 the summer of 2002 and September of 2003; is
19 that right?

20 A. Yes. Yeah. Actually, I think it was
21 the summer of 2003.

22 Q. That you saw him at the parties?

23 A. Yeah, yes.

24 Q. Do you remember the names of any of

10

1 you first saw him dirt-biking until September
2 26, 2003, on how many occasions were you either
3 alone or in the company of others dirt-biking
4 with Jeffrey Southworth?

5 A. I would say, you know, 15 times.

6 Q. Okay. And where would that
7 dirt-biking happen? What locations?

8 A. Well, there is a few different
9 places. Down in Uxbridge, Massachusetts --
10 well, it's closed now, but there was an -- it's
11 called Uxbridge Motor Sports Park. Just a guy
12 ran a little track. You pay \$20 and ride for
13 the day.

14 Then there is a sandpit out in
15 Templeton, Mass. that we went to a lot. There
16 was a -- now it's owned by the Marshalls, the
17 Marshalls from Stow, Mass. But we did a lot of
18 riding there. Those are the two spots that we
19 rode.

20 Q. Any place else that you can think of
21 that you rode with Jeff Southworth?

22 A. We went other places, but we didn't
23 ride there. We went to actual dirt-bike races,
24 Southwick, Mass., Winchester Speed Park. It

12

1 the houses that you were at for parties?

2 A. There was -- we were at one party. I
3 think it was -- the name was Vanecola, Dave
4 or -- yeah, Dave Vanecola.

5 Q. Vanecola?

6 A. Yeah. I'm not exactly sure on the
7 spelling.

8 Q. What street was that on in Harvard?

9 A. I couldn't tell you. I know how to
10 get there. I just don't know the street name.

11 Q. Any other parties that you remember
12 seeing him at in the summer of 2003?

13 A. Not that I can, you know, like, know
14 for a fact.

15 Q. During the fall of 2003, did you have
16 your own dirt bike?

17 A. Fall of -- no, I don't think -- No, I
18 didn't.

19 Q. So when you dirt-biked during the
20 summer of 2002 to fall of 2003 time frame,
21 whose dirt bike or bikes did you use?

22 A. I used -- my brother has a few bikes.
23 I used one of his. And, actually, now it's
24 mine.

	13	14	15
1 Q. Good brother. Okay. Did you ever	1 A. No, no.	1 A. No. Wait, prior to 2003?	1 A. No.
2 use Jeffrey Southworth's dirt bikes at all?	2 Q. He wasn't in any disguises or	2 Q. Prior to September 26, 2003 --	2 Q. Did he ever tell you, other than he
3 A. I mean, I've ridden on them, but I	3 anything like that, was he?	3 didn't want to be seen in Harvard, why he	3 didn't want to be seen in Harvard, why he
4 never really rode them that much.	4 A. No.	4 wanted you to drive his car or his motor	4 wanted you to drive his car or his motor
5 Q. You said he called you up to	5 Q. Did he ever tell you, other than he	5 vehicle?	5 vehicle?
6 dirt-bike?	6 didn't want to be seen in Harvard, why he	6 A. No. He never really mentioned	6 didn't want to be seen in Harvard, why he
7 A. Mm-hmm.	7 wanted you to drive his car or his motor	7 anything. I mean, he had other people drive it	7 wanted you to drive his car or his motor
8 Q. On more than one occasion?	8 vehicle?	8 as well, you know, whoever was there. Whether	8 vehicle?
9 A. Yes.	9 A. No. He never really mentioned	9 it be Scott Espy or, you know, whoever we were	9 anything. I mean, he had other people drive it
10 Q. And he would call you on your cell	10 anything. I mean, he had other people drive it	10 dirt-biking with.	10 as well, you know, whoever was there. Whether
11 phone?	11 as well, you know, whoever was there. Whether	11 it be Scott Espy or, you know, whoever we were	11 dirt-biking with.
12 A. Yes.	12 dirt-biking with.	12 dirt-biking with.	12 dirt-biking with.
13 Q. What is that number?	13 A. No. He never really mentioned	13 September 26, 2003?	13 September 26, 2003?
14 A. 978-239-6954.	14 anything. I mean, he had other people drive it	14 A. I would -- I definitely dirt-biked	14 anything. I mean, he had other people drive it
15 Q. That was your number back in	15 as well, you know, whoever was there. Whether	15 with Jeff probably 15 times. Whether Scott was	15 as well, you know, whoever was there. Whether
16 September of 2003; is that right?	16 it be Scott Espy or, you know, whoever we were	16 there -- he was probably there ten of the	16 it be Scott Espy or, you know, whoever we were
17 A. And still is.	17 times.	17 times.	17 times.
18 Q. Okay. Before I get to that, did he	18 Q. Did you ever, prior to September 26,	18 A. I would -- I definitely dirt-biked	18 September 26, 2003?
19 ever ask you to drive his motor vehicle while	19 with Scott Espy and Jeff Southworth up through	19 with Jeff probably 15 times. Whether Scott was	19 with Scott Espy and Jeff Southworth up through
20 you were in Massachusetts?	20 September 26, 2003?	20 there -- he was probably there ten of the	20 September 26, 2003?
21 A. Yes.	21 times.	21 times.	21 times.
22 Q. When is the first time he asked you	22 Q. Did you ever, prior to September 26,	22 A. I would -- I definitely dirt-biked	22 September 26, 2003?
23 to drive his motor vehicle?	23 2003, drive Jeff Southworth's motor vehicle	23 with Jeff probably 15 times. Whether Scott was	23 2003, drive Jeff Southworth's motor vehicle
24 A. Ah, it was, you know, I can say for a	24 because he was too drunk to drive?	24 there -- he was probably there ten of the	24 because he was too drunk to drive?
1 fact that it was definitely when we were going	14	1	16
2 dirt-biking. I just can't tell you exactly		2	
3 when.		3	
4 Q. Did he tell you that time why he		4	
5 wanted you to drive his motor vehicle?		5	
6 A. No. He just said that he didn't want		6	
7 the cops seeing, you know, us. He didn't		7	
8 really say anything specific. I know that he		8	
9 didn't want the cops seeing him in Harvard.		9	
10 I don't know why. At that time, I		10	
11 wasn't sure, you know, I wasn't -- now I		11	
12 realize that he didn't have his license. But		12	
13 at that time, you know, he got -- a lot of		13	
14 people in Harvard sort of have -- don't really		14	
15 like him.		15	
16 Q. Like him?		16	
17 A. Yes. And this is also stuff that		17	
18 I've learned from his past, like when he got, I		18	
19 guess, expelled from Bromfield School. So you		19	
20 know, he just didn't really like to be seen in		20	
21 Harvard.		21	
22 Q. Okay. So when you were driving him		22	
23 through the streets of Harvard, was he ducking		23	
24 down in the truck?		24	

1 Steakhouse day -- which I'm sure you remember?

2 A. Yup.

3 Q. What time did you first meet up with
4 him?

5 A. Well, we met up with him -- I met up
6 with him earlier on in the afternoon because we
7 were going dirt-biking out in Templeton, that
8 sandpit.

9 Q. So give me an idea. What time was
10 it?

11 A. It was probably, you know, early
12 afternoon. Two, maybe three.

13 Q. And were you working then?

14 A. No, I wasn't.

15 Q. Were you in school then?

16 A. Yes.

17 Q. At UMass Lowell?

18 A. Yes.

19 Q. And you were a day student there?

20 A. Yes, full-time.

21 Q. School had started by September 26,
22 2003, hadn't it?

23 A. Yes, mm-hmm.

24 Q. But you were not at school that

1 didn't. They came out -- they probably -- if I
2 had to time when they got there, you know, it
3 would probably be around five o'clock.

4 Q. But you had gone out with your
5 brother earlier?

6 A. Yes.

7 Q. What is his name?

8 A. Dylan.

9 Q. D-Y?

10 A. L-A-N, yes. Connelly.

11 Q. Okay. You said the Marshalls now own
12 the Templeton sandpit; is that right?

13 A. Well, a portion of them, I think.

14 Well, the rest of it is owned by the Town, but
15 I'm not positive.

16 Q. Give me an idea of how many other
17 people were out dirt-biking that day at that
18 sandpit when you met up with Southworth?

19 A. I know for a fact that it was us
20 four: my brother, myself, Jeff, and Scott. I
21 don't remember anyone else. But, you know,
22 it's a sandpit that a lot of people go to,
23 especially on the weekends. But I don't think
24 it was a weekend. So I don't recall anyone

18

20

1 afternoon; is that right?

2 A. Yeah.

3 Q. Do you know how it was that -- what
4 the arrangement was that lead the two of you to
5 go dirt-biking that day, September 26?

6 A. Ah, well, you know, it was a thing we
7 did, you know, every week or so. You know, a
8 couple times a week we'd go riding. That was
9 one particular day that we decided to do it.

10 Q. You don't remember who called whom?

11 A. Oh, no. He probably called me.

12 That's what usually happened. But I can't
13 really recall.

14 Q. And how did you get to the sandpit in
15 Templeton that day?

16 A. I actually met up with him. He
17 was -- actually, I went out there and met -- I
18 was with my brother earlier. We were riding.
19 Now I'm starting to remember a little more. I
20 was out there earlier on with my brother
21 dirt-biking.

22 And we had been in contact with Jeff
23 and Scott. They were together, and they were
24 going to meet us out there. And then they

1 else.

2 Q. You don't recall seeing anyone else?

3 A. No. Might be an occasional
4 dirt-biker that came by, but I don't, you know,
5 specifically remember.

6 Q. Is this a sandpit that has no trees
7 on it?

8 A. Ah, well, it's actually -- it's a
9 couple of sandpits. You know, there is trails
10 that go from one to the other. But they are
11 very close. They maybe have a little section
12 of trees or a tree line in between them. It's
13 not very -- it's not like a forest or anything.
14 It just...

15 Q. Most of the dirt-biking goes on in
16 the sandpits themselves as opposed to in the
17 trees?

18 A. Yes.

19 Q. So you would be able to see most of
20 the other people who were dirt-biking there?

21 A. Oh, yeah.

22 Q. While you were dirt-biking with Jeff,
23 and Scott, did anybody have anything to drink,
24 alcoholic or nonalcoholic beverages?

1 A. I don't -- no. I mean, we were
2 always out there when we were -- at least what
3 I went out there to do, I don't recall any
4 drinking. We went out there because, you
5 know -- this year I started racing dirt bikes.
6 And we were actually out there training.

7 So I definitely wasn't. I don't
8 remember them either, you know, they were doing
9 the same thing. They were training. Scott
10 wasn't racing, but he was, you know, he was out
11 there, you know, riding with us.

12 Q. Okay. What time did you leave the
13 sandpit?

14 A. It was, you know, shortly after it
15 got dark. Maybe eight, eight o'clock, say,
16 late, 7:30 maybe.

17 Q. Before you all left the sandpit, but
18 after you were done dirt-biking --

19 A. Mm-hmm.

20 Q. -- did you see Jeff have a beer?

21 A. No.

22 Q. Have you heard from anybody that
23 before you all left the sandpit but after you
24 were done dirt-biking that day Jeff had a beer?

1 LongHorn?
2 A. Twenty-five minutes, half an hour.
3 Q. Do you know what route you drove?
4 A. Yes. We took Route 2.
5 Q. Route 2?
6 A. Yup.
7 Q. And Scott drove; is that right?
8 A. Yes.
9 Q. Jeff was sitting in the front with
10 Scott; is that right?
11 A. Yes.
12 Q. You were sitting in the back?
13 A. Mm-hmm.
14 Q. Okay. Did Jeff have anything to
15 drink on that trip?
16 A. Ah, you mean in the car?
17 Q. Yes.
18 A. No.
19 Q. Are you sure?
20 A. At least I didn't see him drink
21 anything.
22 Q. Did you see a cooler in the car?
23 A. No.
24 Q. So am I correct that you can't recall

1 A. No.

2 Q. Where did you go from the sandpit
3 next, or where did you next go from the
4 sandpit?

5 A. We got on the highway and went to --
6 we were going to head to Harvard, and then we
7 decided to go to the LongHorn and get dinner.

8 Q. All right. And you were riding with
9 whom at that time?

10 A. I was with -- at that time, my
11 brother actually left. He lived out in western
12 Mass., goes to school out in Amherst. He left
13 earlier on, and he took my bike, because I
14 don't have a truck. So, and I was with Scott
15 and Jeff. And we went back. I was with them.

16 Q. So your brother left. Did he leave
17 at the same time you all left the sandpit, or
18 did he leave earlier?

19 A. It was right at the same time. I
20 mean, not like -- we didn't follow him out.
21 But, you know, we finished dirt-biking; then he
22 left.

23 Q. All right. How long, approximately,
24 did it take to get from Templeton to the

1 whether anybody had anything at all to drink
2 from five o'clock in until 7:30 or eight
3 o'clock when you all left the pit?
4 A. Yeah, yes.
5 Q. I'm talking water, Coke?
6 A. Oh, we always -- we bring lots of
7 water. We drink water just to hydrate
8 ourselves. But...
9 Q. Where was the water that you were
10 drinking that day while you were at the pit?
11 A. I mean, we usually leave it either
12 in, you know, the back, in the bed of the truck
13 or right inside the truck or, you know, right
14 by the truck somewhere.
15 Q. In a cooler?
16 A. No. We just grab a gallon jug on the
17 way out. There's a gas station.
18 Q. Do you remember having a gallon jug
19 that day?
20 A. I don't remember it, but I most
21 likely did.
22 Q. Okay. And do you know whether Jeff
23 and Scott had any water or other nonalcoholic
24 beverages that they were drinking?

1 A. Well, I can be almost -- pretty
2 positive they did. You know, because that's
3 what we always -- we always had lots of water
4 with us.

5 Q. Do you know where they kept their
6 water?

7 A. I mean, right near the truck.

8 Q. Do you have a memory of seeing it
9 that day, September 26?

10 A. Ah, no, I don't. I mean, I know we
11 had a lot of water. Jeff and Scott actually, a
12 few times when we were dirt-biking, they'd
13 bring an extra gallon or so and just douse
14 themselves down, take a shower almost, after we
15 were done. But it was a little bit cold, I
16 think.

17 Q. That day?

18 A. Getting colder, you know. It was
19 late September. I don't think they were doing
20 that.

21 Q. So approximately what time did you
22 get to the LongHorn Steakhouse?

23 A. Maybe 8:30, 8:45, you know.

24 Q. Did you wear a watch that day, do you

1 brother Michael?

2 A. Yes, I knew him.

3 Q. But he's a little older than you;
4 isn't that right?

5 A. Yeah, yeah.

6 Q. In fact, all of these --

7 A. They're all older.

8 Q. -- guys are all older than you?

9 A. Mm-hmm.

10 Q. Is it accurate to say that you knew
11 Scott from dirt-biking?

12 A. Well --

13 Q. And not otherwise?

14 A. Well, I knew him from dirt-biking.

15 But I knew him really from high school, you
16 know, playing soccer. We played on the soccer
17 team, and he also went to UMass Lowell.

18 Q. Okay. The phone calls to Michael,
19 were they made from inside the LongHorn?

20 A. Yeah, I think they were.

21 Q. And did your group, this is just the
22 three of you now, go to the bar at some point
23 in time at the LongHorn?

24 A. We were waiting at the bar for our --

1 know?

2 A. No.

3 Q. Between leaving the pit and getting
4 to the LongHorn Steakhouse, did anybody in your
5 party make any attempt to hook up with, get
6 together with, other people that night?

7 A. Yeah. Actually, well, it wasn't in
8 the car ride. It was actually once we got to
9 the --

10 Q. LongHorn?

11 A. -- LongHorn.

12 Q. What happened?

13 A. Well, we went in. We found out there
14 was a short wait. So I can't recall exactly.
15 It might have been either Scott calling his
16 brother or, you know, Jeff calling Scott's
17 brother, or someone calling someone with
18 Scott's brother. But somehow we did get in
19 touch with Scott's brother, Michael Espy, and
20 the kids that he was with.

21 Q. Okay. As far as you know, you didn't
22 initiate those calls; is that right?

23 A. Yes, no.

24 Q. Because -- did you know Scott's

1 for the 15, 20 minutes that it took for their
2 table to be cleared.

3 Q. And during that time, the 15 to 20
4 minutes it took for the table to be cleared,
5 did you see Jeff Southworth drinking at all?

6 A. Yes.

7 Q. What did you see him drinking?

8 A. He had a beer.

9 Q. And do you know whether it was from a
10 bottle or a mug?

11 A. I -- yeah, it was from a mug, I'm
12 pretty sure. Yes.

13 Q. And what did you have to drink at the
14 bar?

15 A. Coke. I honestly couldn't remember.
16 I know that it wasn't alcoholic.

17 Q. Do you know what Scott had to drink
18 at the bar?

19 A. He had the same, you know. He just
20 ordered a beer. It was the same thing Jeff
21 had, a mug, glass.

22 Q. Do you know whether or not Jeff had
23 more than one beer while he was at the bar?

24 A. You know, I think he did. I'm not --

1 I don't know for a fact, but, you know, he
2 probably did.

3 Q. Same kind of beer, a mug?

4 A. Yes.

5 Q. Is that right?

6 A. Yeah.

7 Q. Big mug?

8 A. I mean, I don't really -- you know,
9 the normal glass that you'd get in a
10 restaurant.

11 Q. Let me ask you this. After you sat
12 at the table, did you see Jeff have more beer?

13 A. You mean once we got to our seat?

14 Q. At the table as opposed to the bar?

15 A. Yes.

16 Q. After you sat at the table, did you
17 see Jeff have more beer?

18 A. Yes.

19 Q. And was the vessel, okay, in which
20 that beer was delivered to him at the table the
21 same as the vessel in which he received the
22 beer or more beer -- more than one beer at the
23 bar?

24 A. Yes, it was.

29

1 Q. Do you know who served Jeff at the
2 bar?

3 A. I mean, the bartender. I remember it
4 was a girl.

5 Q. Woman. Woman.

6 A. Yes. I don't specifically remember.
7 I think she had blond hair. I just remember
8 seeing blond hair.

9 Q. While you all were in the bar area,
10 were you seated at the bar?

11 A. No.

12 Q. Were you standing at the bar?

13 A. Yes, I was.

14 Q. Okay. Was Jeff standing at the bar
15 as well?

16 A. Yes. I think we were all standing
17 there, and then a seat opened up, and one of
18 them took it. But, I mean, we were really just
19 standing there next to the bar.

20 Q. Okay. I'm going to show you a sheet
21 of paper that I got from the Licensing
22 Commission of the City of Leominster.

23 A. Okay.

24 Q. It's entitled Proposed Floor Plan

30

1 Q. Same mug?

2 A. Yes. Well, not the exact same.

3 Q. Same size?

4 A. The same, same, same cup. Same size,
5 yeah.

6 Q. Do you remember any of the
7 conversation at the bar?

8 A. Not really. Um, I remember we were
9 waiting for -- we were really just sitting
10 there waiting for Mike and Todd Currie, who was
11 with him, and two other kids. I think they
12 were from out of state. I'd never met them
13 before. That was the first time I met them.
14 I'm not sure of their names.

15 Q. By the way, I just want to sort of
16 ask the question one more way. Is it your best
17 memory as you sit here now that while he was at
18 the bar, Jeff Southworth had more than one
19 beer?

20 A. I'd say so, yes.

21 Q. You were at the bar you think for 15
22 to 20 minutes before you were seated at the
23 table; is that right?

24 A. Yeah.

32

1 Leominster, Mass., LongHorn Steakhouse. I'm
2 going to ask you to look at this for a moment
3 or two and see if you can familiarize yourself
4 with the piece of paper, and then tell me --
5 the question I want you to answer is, Does the
6 piece of paper fairly and accurately depict the
7 layout, looking down from above, of the
8 LongHorn Steakhouse as it appeared to you the
9 night of September 26, 2003, okay?

10 (Pause.)

11 A. Yes, it does.

12 MR. FARAH: Can we have that marked
13 as the first exhibit.

14 (Exhibit No. 1 marked for
15 identification.)

16 Q. So can you point to the bar area on
17 Exhibit 1 for me?

18 A. It's right here (indicating).

19 Q. And can you point to where your
20 group, Southworth, Scott, and you, were
21 standing at the bar when you first got to the
22 bar?

23 A. Right in this corner (indicating).

24 Q. Okay. So can you let me get a red

1 pen. Okay, I have a blue pen. This is good.
2 Can you just circle the area where the three of
3 you were first standing for me?
4 (Witness complies.)

5 Q. And then will you put a 3 here and
6 then just make an arrow into that circle for
7 me?

8 (Witness complies.)

9 Q. Thanks. And do you have any memory
10 as you sit here now of where the seat that
11 opened up was?

12 A. Yes.

13 Q. Great. Tell me where that was. Just
14 point to it.

15 A. Right there. I think -- I don't -- I
16 don't think there were four tables. I think
17 there was actually a big table.

18 Q. Okay. That's --

19 A. That's where we were sitting.

20 Q. Before we go there, I just want to
21 get you to tell me, if you remember, where the
22 seat at the bar that you testified earlier
23 opened up and someone sat; can you point to it
24 for me first?

33

1 But everyone else paid for themselves.

2 Q. Am I correct that there was only
3 Jeff, Scott, and you at the bar?

4 A. Oh, yes. At the bar, yes.

5 Q. So who paid the bar tab?

6 A. You know what? I think he actually
7 had the -- whatever the bill was, I think they
8 just had it sent to our table and added it on
9 to the end. I don't believe -- I don't
10 remember anyone paying right at the bar. I may
11 be mistaken on that, but I seem to remember
12 that as being what happened.

13 Q. You didn't pay the bar tab; is that
14 right?

15 A. Yeah. Well, actually, I didn't have
16 any money or anything on me, so Jeff told me
17 he'd buy me dinner.

18 Q. Okay. As far as you know, the person
19 serving Jeff at the --serving all of you at the
20 bar was a blond woman?

21 A. I believe so.

22 Q. Approximately how old?

23 A. Early 20s. Maybe 20 -- well, maybe
24 mid-20s, 25, you know, 26.

34

36

1 (Witness complies.)

2 Q. That's actually the little circle,
3 presumably depicting a seat, that's closest to
4 the point of the arrow that you made; is that
5 right?

6 A. Yeah.

7 Q. You were joined by others that night?
8 Your group was joined by others that night?

9 A. Mm-hmm.

10 Q. Did that happen while the three of
11 you were still in the bar area?

12 A. No. We were actually -- it was just
13 as we were being seated.

14 Q. Okay. Did Scott, while he was at the
15 bar, have more than one beer, to the best of
16 your knowledge?

17 A. I would say that he did, yes.

18 Q. That night, throughout that night,
19 from when you got to the LongHorn Steakhouse
20 until you last saw Jeffrey Southworth, did you
21 have any alcoholic beverages at all to drink?

22 A. No.

23 Q. Who paid the bar tab?

24 A. Well, I didn't -- Jeff paid for me.

1 Q. And do you remember any conversation
2 that anybody in your party had with her?

3 A. With the bartender?

4 Q. Yes.

5 A. No, not really. I mean, other than
6 ordering.

7 Q. Did she seem to know Scott and Jeff?

8 A. No, not -- I mean, I couldn't notice
9 anything.

10 Q. Okay. And it's your best memory that
11 you were at the bar 15 to 20 minutes before you
12 were seated; is that right?

13 A. Mm-hmm.

14 Q. While you were at the bar, were you
15 most of the time no further than a few feet
16 away from Jeff?

17 A. Yeah, I'd say so.

18 Q. Okay. Now, when you were seated at a
19 table, can you just point to the area of the
20 table?

21 A. Right where these four tables were.

22 Q. Okay. And is it your memory as you
23 sit here today that there were four tables in
24 that area, each table with four chairs around

1 it?

2 A. No. I actually -- I only remember
3 our table being there and the booths around us.
4 There's a few booths here, here, and on the
5 side. But I only remember there being one
6 table.

7 Q. Okay. And can you just draw in the
8 shape of the table that you remember, in the
9 area you remember it being in, on Exhibit 1 for
10 me?

11 A. Sure.

12 Q. Thanks.

13 (Witness complies.)

14 Q. And why don't you just shade it in a
15 little bit, so it shows up a little better,
16 okay?

17 (Witness complies.)

18 Q. Am I correct that the person that
19 served your group at the table was not the same
20 person that served the three of you at the bar?

21 A. Yes. It was a different person.

22 Q. Okay. By the way, can you just
23 circle the table, put an arrow pointing to it,
24 and write the word "table" out here in the

1 A. I know that we were there until right
2 as they -- pretty -- as they were closing.
3 Maybe two hours, hour and -- close to two hours
4 there.

5 Q. Let me ask you this. Did Jeff have
6 some food while he was at the table?

7 A. Yes.

8 Q. What did he have; do you remember?

9 A. Um, kind of remember maybe having
10 ribs? I know it was something beef.

11 Q. What makes you say that your group
12 was there until just about closing?

13 A. Well, I kind of remember there not
14 being a lot of people around, you know. The
15 restaurant was sort of -- people emptying out.
16 And, you know, they were starting to clean up a
17 little bit, and there weren't very many cars
18 out in the parking lot when we left.

19 Q. But can you tell me what time you
20 left?

21 A. I would say that it was, if not just
22 before, right around 11 o'clock.

23 Q. But you didn't wear a watch?

24 A. No, I didn't. I wasn't wearing a

1 margin, so we know what we're talking about?

2 A. Sure.

3 (Witness complies.)

4 Q. Okay. While you were at the table,
5 did you see Jeff Southworth drinking any
6 alcoholic beverages?

7 A. Yes.

8 Q. Did you see him drinking beers?

9 A. Yes.

10 Q. How many beers, to your best memory,
11 did you see him drink at the table?

12 A. Maybe four, maybe.

13 Q. Okay. And while he was at the table,
14 did you also see him drinking Manhattans?

15 A. Yes.

16 Q. And what is your best memory of the
17 number of Manhattans you saw him drinking at
18 the table?

19 A. Probably two. I know that he
20 ordered, like, a round of them. I don't, you
21 know, I don't really remember how many. I
22 think, you know, I'd probably say two.

23 Q. Approximately how long was your group
24 at the table?

1 watch.

2 Q. The beers that you saw Jeff drink at
3 the table -- I think I've asked this already
4 but -- were in the same size container as the
5 beers you saw him drink at the bar; is that
6 right?

7 A. Yes, they were.

8 Q. Did you see others drink at your
9 table?

10 A. Yeah.

11 Q. Did you see Thomas Espy drink at your
12 table?

13 A. Ah, is that Mike?

14 Q. Mike Espy, right.

15 A. Okay, yeah, all right.

16 Q. Mike?

17 A. Is that his first name?

18 Q. One of them is Thomas, and it's
19 either Scott or Mike, but Thomas is the real
20 name. I'm totally confused.

21 A. I'm pretty sure their father's name
22 is Thomas. So it's probably Thomas Mike Espy.

23 Q. The one I'm talking about is the one
24 that was not dirt-biking with you. Did you see

1 him drink --
2 A. Yeah, I did.
3 Q. -- at the table? What was he
4 drinking?
5 A. He had a beer, you know. He had, I
6 don't know, maybe a couple of them. And he
7 also had -- I know when they ordered a round of
8 Manhattans, he had one.
9 Q. Did he appear to be under the
10 influence of alcohol to you? This is the
11 non-dirt-biking Espy.
12 A. I mean, I didn't really notice
13 anything. You know, he wasn't, like, acting
14 crazy or anything. Nothing noticeable.
15 Q. This is Espy we're talking about?
16 A. Yes, Mike.
17 Q. Okay. Was there more than one
18 waitress serving your table that night?
19 A. Ah, I honestly couldn't tell you. I
20 don't believe so, but there may have -- I mean,
21 you know, there could have been someone who
22 came over and dropped something off. And I
23 guess I don't remember seeing two waitresses.
24 Q. When you describe where you were

1 A. I --
2 Q. I'm sorry.
3 A. I kind of remember now -- I don't
4 know who it was, whether it was, you know, a
5 manager or someone. It might have even been
6 our waitress. I remember someone coming over
7 and asking our table to be quiet, a little bit
8 quieter, you know.
9 Q. That was because the table was loud?
10 A. Yes.
11 Q. There is no question in your mind
12 about that the table was loud that night; is
13 that right?
14 A. It was loud to me. I don't know
15 whether to everyone else.
16 Q. Who was making a lot of noise that
17 night at the table?
18 A. I think, you know, pretty much just
19 everyone.
20 Q. Jeff included?
21 A. Yes.
22 Q. Was Jeff particularly loud that
23 evening at the table?
24 A. Um, not particularly loud. But, you

1 sitting as a long table, or you've described
2 where you were sitting as a long table --
3 A. Yeah, well, I'm pretty sure it was a
4 couple of tables put together, you know.
5 Q. That's what I wanted to know. And
6 help me out and tell me how much time elapsed
7 between when the three of you were seated at
8 the table and the others who joined you that
9 evening arrived.
10 A. Um, well, I kind of remember us all
11 being like, you know -- they told us our seat
12 was ready. And pretty much at the same time, I
13 think they were walking in; and we met up with
14 them right as we were sitting down.
15 Q. Did anybody say while you were at the
16 table that night that he was feeling drunk, or
17 words to that effect?
18 A. Who?
19 Q. Anybody at the table.
20 A. Anyone feeling drunk?
21 Q. Anybody say it, yes.
22 A. No, not that I can remember.
23 Q. Did anybody while you were at the
24 table that night say --

1 know, pretty -- not real loud, but I guess
2 everyone was loud enough to have a waiter or
3 someone come over and ask us to tone it down.
4 Q. And when the waiter or waitress came
5 over and asked everybody to tone it down, that
6 was at what point in the meal?
7 A. That was, you know, I think pretty
8 much after we had finished, and it was, like,
9 we were just sitting there.
10 Q. Just sitting?
11 A. Yes.
12 Q. Drinking?
13 A. They were.
14 Q. And give me your best estimate of how
15 much time elapsed from when the woman came over
16 and told you to tone it down and when you
17 all left the restaurant.
18 A. Um, maybe 25 minutes, half an hour.
19 Q. Did the group tone it down somewhat
20 after that?
21 A. Yes.
22 Q. Other than beers and Manhattans, do
23 you know what anybody else was drinking this
24 night? And Cokes for you or whatever you were

1 drinking.

2 A. I don't remember anything else. Beer
3 or Manhattans. I remember everyone, you know,
4 ordering a beer with their meal. And then once
5 we got the meal, they ordered a round of
6 Manhattans.

7 Q. What did the waitress who served you,
8 what did she look like?

9 A. She was also young, probably around
10 the same age as the bartender. I don't
11 actually -- I don't really remember too much
12 about her.

13 Q. Do you remember the color of her
14 hair?

15 A. I'd say blond, just because there was
16 a lot of blond girls that were working there.
17 But I don't want to tell you the wrong thing.

18 Q. Fair enough. Did I ask you what you
19 ate?

20 A. No.

21 Q. I'm going to ask you, what did you
22 eat?

23 A. I had a steak.

24 Q. Did you have any chowder?

1 when I've been to the LongHorn, I've always
2 ordered a steak. But I know for a fact that if
3 I ordered a steak, it would have been well
4 done.

5 Q. It would have been well done?

6 A. Yes.

7 Q. Because that's the way you like it,
8 right?

9 A. Yes. In fact, if it was anything,
10 hamburger, whatever, that they ask your
11 preference on how they cooked it, it would be
12 well done.

13 Q. How long did it take from when the
14 check was paid for your table until you left
15 the LongHorn?

16 A. I think we left just as we were
17 paying. Pretty sure, yes.

18 Q. Did anyone in your group drink
19 anywhere else at the LongHorn that night other
20 than at the table after the check was paid?

21 A. Well, I mean, before at the bar,
22 but...

23 Q. I understand that. But after the
24 check was paid at the table, did your group

1 A. No. Clam chowder?

2 Q. Any kind of chowder.

3 A. No.

4 Q. Did you have any chicken fingers?

5 A. No.

6 Q. You were drinking what?

7 A. Ah, either Sprite or a Coke. I was
8 drinking water for a while, actually.

9 Q. Just give me a second. Do you
10 remember anyone having chowder?

11 A. I kind of do. I mean, I kind of, ah,
12 I'd say that if anyone ordered it, it was
13 probably Mike Espy. I kind of remember
14 chowder, clam chowder or some sort of soup
15 being ordered. I just remember seeing it on
16 the table.

17 Q. Okay. And you had a steak; you're
18 sure of that?

19 A. Um...

20 Q. Well, let me withdraw the question.
21 Let me ask you this. Did you order your steak
22 well done?

23 A. I'm almost positive that I ordered a
24 steak, because, you know, when I -- at least

1 then proceed to the bar, let's say?

2 A. No.

3 Q. And did you then get back into the
4 truck with Jeff and Scott?

5 A. Yes.

6 Q. And the same seating arrangement?

7 A. Yes.

8 Q. Was it the same seating arrangement?

9 A. Yes.

10 Q. Okay. Did you then proceed to the
11 Four Points Hotel in Fitchburg?

12 A. Yes.

13 Q. Do you remember any of the
14 conversation during that trip?

15 A. Um, yeah, I think -- well, I know
16 that the two kids from out of town were staying
17 at the hotel.

18 Q. Yup.

19 A. And I remember Jeff and Scott
20 debating whether they -- because I know that
21 the rest of group was going -- you know,
22 besides Scott, myself, and Jeff, the rest of
23 the group, Mike, Todd, and the other two kids,
24 they were going to go to The Other Side. It's,

1 like, a strip club down the street in
 2 Fitchburg. And Scott and Jeff were debating
 3 whether they wanted to go to it.

4 Q. This is on the ride from the LongHorn
 5 to the Four Points?

6 A. Yes.

7 Q. That's when they had that
 8 conversation?

9 A. Mm-hmm.

10 Q. Is that yes?

11 A. Yes.

12 Q. Okay. While you were at the
 13 LongHorn, did Jeff appear to you to be under
 14 the influence of what he had been drinking at
 15 the LongHorn?

16 A. I mean, yeah, a little bit.

17 Q. What did he -- what did he show, what
 18 did he manifest that makes you say that?

19 A. Um, I don't know. Well, Jeff is,
 20 like, every time I've seen him, he always
 21 stands up real straight. He's a big kid. You
 22 know, he kind of -- he's not -- it's not like
 23 he talks a lot, you know. He waits until he is
 24 talked to or -- unless he's talking to someone,

1 Q. At the Steakhouse?
 2 A. Yeah, I don't remember specifically
 3 seeing his eyes, you know, looking -- seeing
 4 them glossy. But very well, very well could
 5 have. That could be.

6 Q. Were his eyes closed somewhat while
 7 he was at the Steakhouse?

8 A. No.

9 Q. Let me ask you this. At some point
 10 in time, there was a discussion among Scott,
 11 Jeff, and you about that Jeff was too drunk to
 12 drive; isn't that right?

13 A. Is this at the Steakhouse?

14 Q. No. At some point in time that
 15 night.

16 A. Um, I kind of -- yeah, I kind of
 17 remember it when we got to the -- no, did,
 18 ah -- I don't know whether it was when we were
 19 leaving the hotel or when we pulled into the
 20 parking lot of The Other Side, whether it was
 21 right then, but, yeah, I do kind of remember
 22 something of that.

23 Q. While you were sitting in the parking
 24 lot at The Other Side, do you remember at least

1 he doesn't really -- he's not an obnoxious kid
 2 or anything, you know.

3 That night he was, you know, sort of
 4 just seemed to me that he was a little bit
 5 under the influence just because by the way he
 6 didn't really hold himself -- at least it
 7 looked like he didn't hold himself the same way
 8 as he usually did.

9 Q. Was he sloppier looking than he
 10 usually is?

11 A. A little bit, yes.

12 Q. Was he louder than he usually
 13 appeared to you?

14 A. Yeah, I mean, yeah.

15 Q. Was he more boisterous than he
 16 usually is?

17 A. Ah, not that much. I mean, he's
 18 usually -- when he wants to say something, he
 19 says it and, you know.

20 Q. Was his speech slurred at all that
 21 night at the LongHorn Steakhouse?

22 A. No. Not that I remember.

23 Q. Okay. Were his eyes glassy at all?

24 A. Maybe, yeah.

1 Scott and Jeff having a conversation about that
 2 Jeff was too drunk to drive?

3 A. Um, well, I don't remember them
 4 saying, you know, he was too drunk to drive.
 5 But I remember Scott saying, I'm going to
 6 drive; you know, you're not going to. And
 7 actually, when we left the hotel and went --
 8 drove to The Other Side, Jeff was actually
 9 sitting in the back.

10 Q. By then?

11 A. Yes. He was with his dogs, actually.

12 Q. Was he slumped over in the back of
 13 the truck from the trip -- on the trip from the
 14 hotel to The Other Side?

15 A. No. I mean, I wasn't -- I was
 16 sitting up front. I wasn't really looking
 17 back. But, no. I mean, he was -- it was kind
 18 of crowded, I think. He has two dogs. His two
 19 rottweilers are always with him. And we had --
 20 Mike Espy actually came with us for that ride.

21 Q. Oh, Mike was in the Dakota; is that
 22 right?

23 A. Yeah, Dakota, I think, yeah. So they
 24 were in the back with the two dogs. So it was

1 a little bit crowded.

2 Q. Do you remember anything that they
3 said during that trip, Jeff and Mike, in the
4 back?

5 A. Not really.

6 Q. Okay. To drive from the LongHorn to
7 the --

8 A. The Other Side?

9 Q. No, to the Four Points.

10 A. Oh, oh, yes. Yes.

11 Q. Which is the drive you took that day,
12 took approximately how long?

13 A. Um, 10 minutes, 15 minutes.

14 Q. Did you go on Route 12?

15 A. Um, well, I know that you have to get
16 on Route 12 to go to the Four Points. You
17 know, it's off of Route 12. I kind of -- I
18 think we took Route 2. I mean, that's the way
19 I'd go. I don't actually remember
20 specifically.

21 Q. Do you know what the distance is from
22 the LongHorn to the Four Points?

23 A. It's probably, you know, three miles
24 maybe. It's not very far.

1 A. Mm-hmm.

2 Q. This is from the LongHorn to the --

3 A. Yes, yes.

4 Q. -- to the Four Points?

5 A. He was in the back.

6 Q. And did he say why he wanted to be in
7 the back?

8 A. Um, I mean, I kind of remember him
9 saying he wanted to be -- I don't think Mike
10 really wanted to be sitting next to the dogs.
11 So I think Jeff -- I kind of remember him
12 saying he was sitting in the back just to take
13 care of the dogs. But I mean, I don't remember
14 him saying anything else but that.

15 Q. Approximately how long were you at
16 the Four Points?

17 A. Thirty-five minutes, 40 minutes.

18 Q. And you stayed inside the hotel in a
19 corridor next to the room; is that right?

20 A. Yeah, it was, like, right next to the
21 elevators.

22 Q. Do you remember testifying before the
23 grand jury in this case?

24 A. Yes.

1 Q. Okay.

2 A. It's actually one exit down on
3 Route 2, and they're both a very short distance
4 off of the off-ramp.

5 Q. So it's one exit off of Route 2?

6 A. Mm-hmm.

7 Q. Route 2 is -- the LongHorn is right
8 at the intersection of Route 2 and Route 12?

9 A. Well, not directly. But there is,
10 like, a big shopping plaza, and it's right next
11 to the shopping plaza.

12 Q. And as far as you know, the three of
13 you went directly from the LongHorn to the Four
14 Points; is that right?

15 A. Yes. There were four of us in the
16 car at that point.

17 Q. At that point, there were four?

18 A. Yes.

19 Q. Who was the fourth?

20 A. Mike Espy.

21 Q. Was Jeff in the front during that
22 ride, or was he back with the dogs by then?

23 A. He was in the back.

24 Q. By then he was in the back?

1 Q. In the criminal case against Jeff
2 Southworth?

3 A. Mm-hmm (nodding.)

4 Q. Do you remember then saying that you
5 were 15 to 20 minutes in the area outside the
6 room?

7 A. Yeah.

8 Q. That sounds about right to you?

9 A. Yeah.

10 Q. Okay. And Jeff had one beer at that
11 point; is that right?

12 A. Yeah.

13 Q. And it was from a can; is that right?

14 A. Yes, it was.

15 Q. Do you know the difference between a
16 12-ounce can and a 16-ounce can?

17 A. Yeah, it's got --

18 Q. One is bigger.

19 A. Yeah, it's got more in it.

20 Q. Do you know which one he was drinking
21 from?

22 A. Twelve-ounce, I'd say.

23 Q. Okay. And while he was drinking from
24 that 12-ounce can -- strike that.

1 Do you know how long it took you to
 2 drive from the hotel to The Other Side?

3 A. Takes about five minutes. It's a
 4 very short distance. It's right on Route 12,
 5 I'm pretty sure.

6 Q. Route what?

7 A. Route 12. I know it's at least --
 8 you don't turn unless Route -- well, Route 12
 9 may make a turn off. But I know that you stay
 10 on the same road.

11 Q. And do you know how long you were in
 12 the parking lot of The Other Side?

13 A. Yeah.

14 Q. Before you left?

15 A. Actually, we -- I didn't really want
 16 to go there. I kind of didn't want to go to
 17 dinner. I kind of thought -- I didn't know we
 18 were going to go to dinner. So I was like, We
 19 should just go back to Harvard and get dropped
 20 off. And Jeff was like, All right, yeah, I'm
 21 ready to go; I don't really want to go inside
 22 either. So we actually -- he still had Mike in
 23 the car. Well, he got back in the car from the
 24 hotel with us.

1 Scott had left his car there. That's where
 2 he -- I guess his grandmother lives there. So
 3 he left his truck there.

4 Q. So you went from The Other Side to
 5 the apartment complex in Littleton?

6 A. Yes.

7 Q. Which is right off 495; is that
 8 right?

9 A. Yes.

10 Q. And the route that you traversed, the
 11 route you drove from The Other Side to the
 12 apartment complex was Route 2; is that right?

13 A. Yeah. Um, yeah, it was Route 2 to
 14 495.

15 Q. Okay. How long were the three of you
 16 at the apartment complex together that night?

17 A. Um, well, I mean, we pulled in, you
 18 know, right across from Scott's truck. Scott
 19 and I got out. Jeff got out, got in the
 20 driver's seat.

21 I jumped up in the bed and grabbed my
 22 bag, you know, and Scott left his stuff with
 23 Jeff. I just grabbed my dirt-biking bag, my
 24 boots, my helmet, and just threw it off the

1 Q. Mike?

2 A. Yes.

3 Q. Right.

4 A. And we dropped him off, you know,
 5 right outside. Pulled in, basically. We
 6 didn't even get out of the car. He got out,
 7 and then we left.

8 Q. Okay. So you were in the parking lot
 9 at The Other Side only as long as it took to
 10 drive through the parking lot to the door of
 11 The Other Side and let Mike exit the Dodge
 12 Dakota, and then shut the door and leave the
 13 parking lot?

14 A. Yes.

15 Q. Is that right? Okay. And then did
 16 the three of you, Jeff, Scott, and yourself,
 17 did you then proceed back to Templeton?

18 A. No.

19 Q. Where did you go?

20 A. We went -- well, we were heading back
 21 to Harvard. But we had to go to -- it's
 22 actually -- it's -- I believe it's in
 23 Littleton. It's right off of 495. There is an
 24 apartment or condominium complex. I know that

1 truck, got out of the bed, and he left.

2 Q. He took off, Jeff?

3 A. Yeah.

4 Q. So that whole process of pulling in
 5 and parking beside Scott's truck through Jeff
 6 taking off and leaving --

7 A. Mm-hmm.

8 Q. -- was a matter of how long,
 9 approximately?

10 A. Two minutes, three minutes. It was
 11 very short.

12 Q. Jeff drove over Scott's foot on the
 13 way out?

14 A. Yes. He -- we -- you know, you pull
 15 in right here. And Scott was parked over here,
 16 and Jeff pulled in over here (indicating). I
 17 threw all my stuff -- you know, there is a
 18 little island of grass. I threw it all right
 19 there, and I jumped out. That's where I was
 20 standing.

21 And Scott was telling me, you know,
 22 hurry up and grab my stuff so we can go. And I
 23 did that. And he was standing at that point
 24 still right next to the truck.

1 Q. Scott?

2 A. Yes.

3 Q. And --

4 A. And Jeff, you know, backed out. And
5 however it happened, his ankle got stuck or
6 went underneath the tire or something. And,
7 you know, Scott immediately said to me, he's
8 like, Oh, he just ran over my ankle.

9 And he was still walking on it. He
10 didn't think it was, you know -- at that point,
11 he didn't think it was broken until, you know,
12 Jeff pulled out of the parking lot and he was
13 gone.

14 We, like, started walking over to the
15 truck, and, you know, immediately Scott, you
16 know, went over and sat down on his truck and
17 took his shoe off, looked right at this ankle,
18 and was, like, Something is wrong, you know.

19 Q. At any point in time that night, were
20 you looking to get away from Jeff, leave Jeff?

21 A. Ah, no, I wasn't trying to get away
22 from him. I was just actually trying to get
23 home.

24 Q. Did your parents know that you were

1 A. Yes, he did.

2 Q. You didn't see him use a credit card
3 at all?

4 A. No, I didn't.

5 Q. And did the others pay with cash as
6 well?

7 A. I'm pretty sure we did, yeah. I
8 think the whole bill was paid for in cash.

9 Q. Do you remember any conversations
10 that anyone in your group had with anyone at
11 the restaurant, any employee or person you
12 understood to be an employee at the restaurant
13 while you were at the restaurant other than the
14 conversation with the employee who said to
15 quiet down?

16 A. No, no.

17 Q. Do you remember the waitress asking
18 anyone in your group for an ID, some proof that
19 people in the group were old enough to drink?

20 A. I don't remember that, no.

21 Q. How about at the bar? Do you
22 remember the bartender asking anyone in your
23 group for identification?

24 A. No, I don't recall that either.

1 going to go out that night?

2 A. You mean dirt-biking or?

3 Q. Late, after dirt-biking.

4 A. They figured I would.

5 Q. Why did you want to get home?

6 A. Ah, I think I -- I was just, you
7 know, out, and I wanted to go home. I had been
8 dirt-biking. I wanted to take a shower. I
9 didn't know we were going to go out to dinner.
10 So I kind of assumed that I was going --
11 originally, from the sandpit, I was going to go
12 with my brother out to his place and stay out
13 there for the night.

14 Q. In Amherst?

15 A. Yes. But then I decided I'll just go
16 back home. But I hadn't called my parents or
17 anything and told them what my plans were, so
18 at that point, they assumed I was just coming
19 home that night. So I figured that's what I'd
20 do.

21 Q. Did Jeff pay for your -- you said
22 Jeff paid for your dinner food?

23 A. Dinner, yes.

24 Q. Did he pay with cash?

1 Q. Scott realized at some point in time
2 while you were in the parking lot of the
3 apartment complex Jeff had driven off with his
4 keys; is that right?

5 A. Yeah. It was, like, he realized that
6 something was wrong with his ankle. And he,
7 like, opened his bed, the door to the truck,
8 the bed of the truck, and he sat down, and he
9 was looking at the ankle. And he said, All
10 right, let's go.

11 And he reached into his pocket and
12 was like, you know, it was the worst thing that
13 can happen. And then right then, we tried
14 calling Jeff. And I remember getting in touch
15 with him on his cell phone. I called him, you
16 know.

17 I was like, Jeff, you know, you just
18 ran over his ankle, you know. He's like, I
19 did? I was like, Yeah, I think it's broken.
20 And we also left the keys in the truck; you're
21 going have to turn around. He was like, Oh,
22 all right, you know, I'll turn around at the
23 next exit.

24 I don't remember specifically what we

1 were saying, but I remember telling him that he
 2 ran over his ankle and that we forgot the keys.
 3 He was like, All right, I'm turning around.

4 Q. You made the call to Jeff from your
 5 cell phone; is that right?

6 A. Yes. We were both trying, but I
 7 think I was the first one to get through.

8 Q. And do you know from the time that
 9 Jeff pulled out of the parking lot until you
 10 got through to Jeff and had that conversation
 11 with him, how much time elapsed?

12 A. Not more than five minutes, you know.
 13 We were sort of worried about -- I was sort of
 14 worried about Scott's ankle before. You know,
 15 we were trying to get into the truck. And we
 16 realized afterwards that he didn't have his
 17 keys and started calling him.

18 Q. So is it accurate to say you didn't
 19 get through on the first call to Jeff?

20 A. Yes.

21 Q. But is it also accurate to say it
 22 wasn't a matter of more than a few minutes
 23 before someone, you think yourself, was able to
 24 get through to Jeff?

1 A. Yes.

2 Q. And when next after that conversation
 3 with Jeff where he said, in effect, that he
 4 would turn around, was it that you had any
 5 communication with Jeff?

6 A. Well, we waited there for a while for
 7 Jeff to come back. It was, you know, probably
 8 maybe a half an hour, maybe even more. I know
 9 that it was a good while. And we figured, you
 10 know, he'd show up.

11 And then we started to call him
 12 again, try to get in touch with him. We
 13 weren't sure where he was, why he wasn't
 14 showing up. He couldn't have been that far
 15 down the road. We figured maybe he had, you
 16 know, another five, two minutes to get to the
 17 next, you know, exit so he could turn around.
 18 Because at that point he was on 495.

19 Q. He told you he was on 495 when you
 20 spoke to him?

21 A. Um, yes. Yeah, well, I know for a
 22 fact that he was on 495. But I also think he
 23 said he was on 495.

24 Q. So you waited for about half an hour,

1 but my question to you was when was it that you
 2 next had any communication with him?

3 A. Oh, yes. Well, we figured that he
 4 wasn't going to be coming, you know. We waited
 5 there for a while. We were -- I remember keep
 6 on trying to call him. And I don't -- I can't
 7 quite remember whether it was Scott or I that
 8 got in touch with him. But I know that we did.

9 And he said, you know, I got into an
 10 accident, you know. And we were, like, you
 11 know, Why didn't you call us? You know, What's
 12 going on? Are you all right? You know, Where
 13 are you, you know. He didn't say anything. He
 14 didn't say much. Then the call just ended.

15 And at that point, we were like,
 16 Well, who are we going to call? I think it was
 17 almost -- I think it was around almost one
 18 o'clock at that point. So we didn't really
 19 want to call Scott's parents to see if they
 20 could bring the extra set of keys. So we ended
 21 up just breaking one of the windows in Scott's
 22 car so he could get in, because he had an extra
 23 key in his car.

24 Q. So your best memory of what time it

1 was when Jeff told you he got into the accident
 2 was how long after he left the apartment
 3 complex?

4 A. Maybe 40 minutes, 45 minutes almost,
 5 yeah.

6 Q. After that conversation, did you have
 7 any further contact with Jeff that day?

8 A. No. Um, after we spoke with -- I
 9 can't -- don't remember which one of us it was
 10 speaking with him. I remember trying to call
 11 him after we talked to him and he said that
 12 he'd crashed. I remember specifically trying
 13 to call him, like, lots of times. I left
 14 messages saying, Where are you? Are you all
 15 right? Can we come get you?

16 I know for a fact that I left a
 17 message. And I don't know if Scott -- but I'm
 18 guessing that he left a message on his cell
 19 phone. We eventually just figured that he was
 20 on 495.

21 So what we did was, you know, after
 22 we broke the window, we cleared, like, all the
 23 glass away, we just started heading up 495.
 24 Because we didn't know -- we knew he was

1 somewhere on 495. So we headed up 495 North,
2 and we didn't really -- didn't know how far he
3 would have gotten. Tried to figure it out, our
4 judgment. And we got on at the on-ramp right
5 next to the apartment complex.

6 Q. Route 2?

7 A. No. This is 495.

8 Q. But at what intersection is that on
9 495, if you know?

10 A. Well, I know that there are two exits
11 for Littleton on 495 North.

12 Q. Mm-hmm.

13 A. And South. I know we were at the
14 first one. So we got on at the first one.
15 And, you know, we passed the second exit for
16 Littleton Common and Groton and Acton.

17 Q. Yup.

18 A. And between there and the next
19 exit -- Westford; Boston Road, Westford, I
20 think -- we saw, you know, all these cops lying
21 on the south side. We saw lots of cop cars,
22 you know, ambulances, all sorts of police and
23 ambulance vehicles.

24 So we assumed that that was, you

1 couldn't see anything.

2 And at that point, we got off at the
3 Groton/Acton exit. It was, you know, we
4 headed, like, over to the south side, because
5 we figured if he was anywhere, you know, he'd
6 either be at the crash scene, you know, with
7 the cops or whatnot.

8 But we hadn't talked to him, you
9 know. We figured he'd call us. So what we did
10 is we stayed in that area, and we continued to
11 try and get in touch with him. That's when we
12 left messages, Where are you? Can we come get
13 you? Are you all right? What happened? And
14 he never called us. And, you know, we never
15 got in touch with him.

16 Q. So finally you went home?

17 A. Yes.

18 Q. Have you spoken to Jeff since that
19 night?

20 A. No, I have not.

21 Q. Have you spoken to anybody that you
22 understand is assisting Jeff in this matter?

23 A. Um, other than my brother, who is
24 taking care of his dogs, I actually -- I talked

70 1 know, he must have crashed there. And we
2 realized it was definitely something serious.
3 So we drove up to the Westford exit, and we
4 turned around.

5 And we actually made the cycle, like,
6 I believe we went and turned around again just
7 to make sure that we -- because we were trying
8 to see. The first time we drove by, we
9 couldn't, you know, couldn't see any cars. You
10 could just see the police cars.

11 Q. Yup.

12 A. So I couldn't see, you know. I was
13 looking for his truck.

14 Q. Yup.

15 A. To try and figure out if it was his
16 crash or some other crash, if he was even
17 there. All the meanwhile we were trying to
18 call him, and we couldn't get in touch with
19 him.

20 We didn't see any trucks or any cars
21 at all. We didn't see anything crashed. We
22 just saw all the squad cars and the ambulances.
23 So that's -- we took another loop around to see
24 if we could. And it was the same thing. We

1 to his mother on the phone once. She called
2 looking for my brother. But no, no one else.
3 I didn't really talk to her about anything.

4 Q. Do you know how it is your brother is
5 taking care of Jeff's dogs?

6 A. Yeah. Um, well, my brother actually
7 just got -- this was last -- the beginning of
8 last -- beginning -- the summer of 2003.

9 Q. Yes.

10 A. My brother purchased a rottweiler
11 puppy. So he had just gotten a dog, and it was
12 a few months after that he had just picked up
13 the responsibility of a dog. And he liked the
14 rottweilers. And we were all used to his two
15 dogs, Ruby and Daisy. We knew them. They were
16 familiar with us, with my brother's dogs.

17 So he decided, you know, his parents
18 didn't want to, you know, keep them and take
19 care of them. So my brother, I guess -- I
20 don't whether he said he would or they asked
21 him. I'm not really sure.

22 Q. Where does your brother live in
23 Amherst?

24 A. He actually lives at, it's right next

1 to Amherst. It's like 15 minutes out of
2 Amherst. Shutesbury.
3 Q. Shutesbury?
4 A. Yes.
5 Q. Does he have a house?
6 A. Yes, he rents part of a house.
7 Q. At the LongHorn that night, do you
8 recall whether there were, in the area between
9 the booths here and the booths here
10 (indicating), any tables other than the tables
11 that you all were sitting at?

12 A. Um, I kind of don't remember any
13 other tables being in between the booths and
14 stuff.

15 Q. Within the area that you've encircled
16 here on Exhibit 1, do you remember any tables
17 other than the table that your group was at,
18 the table or tables that your group was at?

19 A. No. No.

20 Q. Do you remember any people while your
21 group was at its table, any people sitting in
22 any of the booths on either side of your table?

23 A. Um, yeah. I was actually sitting,
24 like, on -- I was sitting on this side facing

1 Q. At the head of the table?
2 A. Well, it wasn't at the end. I don't
3 think -- I don't know if anyone was sitting at
4 the end. He was sitting like, at the corner.
5 Like, say this was the table. He was sitting
6 right here, where I am.

7 Q. Put Jeff in for me, JS.
8 (Witness complies.)

9 Q. So Jeff and you were both sitting at,
10 as you face Exhibit 1, the right-hand end of
11 the table; is that right?

12 A. Yes.

13 Q. And was there anything while you were
14 sitting there obstructing your view of Jeff
15 across the table?

16 A. Um, nothing really. I mean, there
17 was maybe, like, a lantern on the table or
18 something. But nothing obvious.

19 Q. You could see his face when you were
20 talking to him?

21 A. Yeah.

22 Q. Okay. Did you ever learn that Jeff
23 had been charged with trafficking drugs, in
24 federal court, in Vermont?

74 1 that way (indicating). And I know -- I'm
2 pretty sure there were a few people here, but I
3 can't really remember. I know there was a
4 group of people sitting in the corner booth.
5 And I know there was at least one group of
6 people in one of those booths.

7 Q. Can you put an X where there was a
8 group sitting in the corner?

9 (Witness complies.)

10 Q. Circle that X for me.

11 A. Sure.

12 Q. And put a Y where you found some
13 people sitting in another booth you pointed out
14 earlier.

15 A. I'm not really sure which booth it
16 was. I'll just put it right here.

17 Q. Why don't you circle that, too.

18 (Witness complies.)

19 Q. Just put your initials where you were
20 sitting, small though.

21 (Witness complies.)

22 Q. Where was Jeff sitting?

23 A. He was sitting, like, across from me
24 at the end of the table.

75 1 A. No.
2 Q. You didn't know that?
3 A. No.
4 Q. Now you do.
5 A. (Witness nods.)
6 Q. Did you know that Jeff had been
7 charged with driving under the influence and
8 leaving the scene of an accident in Amherst,
9 Mass., in 2003?

10 A. No. I had heard that he had gotten
11 into an accident -- or his truck -- I remember
12 hearing that his truck was totalled out in
13 Amherst. But I don't remember hearing much
14 about it.

15 Q. Do you remember Jeff ever saying to
16 you that his license to operate was suspended
17 in Massachusetts?

18 A. No.

19 Q. Did you ever see Jeff smoke
20 marijuana?

21 A. Nope, never have.

22 Q. Did you ever see him ingest any
23 narcotics?

24 A. No.

1 Q. I'm near the end, I think. Just give
2 me a second or two, please. Do you know what a
3 fire wrap is at the LongHorn Steakhouse?
4 A. No. Is it a blanket or something to
5 wrap someone with if they're on fire?
6 Q. You don't know of a dish of food
7 named a fire wrap; is that right?
8 A. No.
9 Q. Do you know what Jeff's father did
10 for work?
11 A. No, I don't.
12 Q. Did Jeff ever talk to you about what
13 his father did for work?
14 A. Nope.
15 Q. Did he ever talk to you about his
16 father?
17 A. Not that I can remember.
18 Q. Do you remember Jeff ever saying to
19 you --
20 A. Actually, I remember his father -- he
21 did say one thing about his father. I remember
22 that he was talking about his father getting a
23 new boat and that he was wanted to get his
24 dad's old boat.

1 And he was -- it was a sailing boat
2 he was talking about. And, like, his dad was
3 into sailing a lot. And his dad got a new
4 boat, and Jeff was saying he wanted to try to
5 get into it, and he wanted to get his dad's old
6 boat.

7 Q. Did he get his dad's old boat, as far
8 as you know?

9 A. I think so, yeah.

10 Q. When did you have that conversation
11 with him?

12 A. You mean about what his dad --

13 Q. His dad's boat, getting his dad's
14 boat.

15 A. Um, you know, it was probably two
16 weeks, a week prior to all of this happening.

17 Q. And did he describe the dad's new
18 boat, his dad's new boat to you?

19 A. No. I remember him showing me, like,
20 a printout or something. It was like a
21 computer printout of, like, pictures of the
22 boat that his dad owned, though.

23 Q. The new boat or the old boat?

24 A. The old boat.

1 Q. The old boat?
2 A. Yes.
3 Q. Was it a sailboat?
4 A. Yes.
5 Q. And did you know how big it was?
6 A. Ah, no. I mean, I think it was,
7 like, 30 feet maybe. I'm not positive.
8 Q. What makes you say that Jeff got that
9 boat?
10 A. I remember -- well, he was, like,
11 really into -- he was really -- he seemed like
12 he really wanted to get it. And I remember him
13 saying that he was, you know -- he didn't say
14 anything about he wasn't going to get it. He
15 didn't say anything about his dad selling the
16 boat. He said he was going to get his dad's
17 boat, yes.
18 Q. He told you his dad was going to give
19 him his boat?
20 A. Yes. Well, I don't know whether he
21 was going to give it to him. I don't know what
22 the situation was. I just remember him saying
23 he was going to acquire a boat.
24 Q. Do you know where the boat was when

78 80
1 you were talking about it?
2 A. Well, I know it was -- maybe, well, I
3 assumed it was in Portsmouth, because I knew
4 that's where his father and his mother and he
5 lived.

6 Q. You never went sailing with Jeff?

7 A. No.

8 Q. Did you have any other conversations
9 with Jeff about Jeff getting things from his
10 father?

11 A. No.

12 Q. Did Jeff ever tell you that his
13 father had a lot of money or words to that
14 effect?

15 A. He never mentioned anything. I kind
16 of assumed just because, I mean, Harvard,
17 there's a lot of rich people from Harvard.
18 Also, he had a pretty nice truck. I kind of,
19 you know, didn't think that the average kid
20 would drive a brand new truck like that.

21 So I kind of figured that his
22 parents, you know, having boats and his kid
23 driving a nice car like that and they were from
24 Harvard, and -- I just kind of assumed that

1 they had money.

2 Q. The truck that he was driving the
3 night of the accident was a rental truck,
4 that's the Dodge Dakota; is that right?

5 A. Yes.

6 Q. But the truck you're talking about,
7 the pretty nice truck, was some other truck; is
8 that right?

9 A. Yes.

10 Q. What was that?

11 A. Um, I'm pretty sure it was, like, a
12 Chevy Silverado. I think it was a -- I know it
13 was diesel. I think it was -- I don't know the
14 exact name. I think it's, like, Duramax Diesel
15 or something, the name of the model or
16 something.

17 Q. Was that the truck that he had had
18 the accident with in Amherst, if you know?

19 A. No. It's -- I remember hearing that
20 he had, you know -- a car, a truck got totaled.
21 And then he got -- he had this new truck. And
22 that was -- that's the new truck that I was
23 talking about. It was brand new, pretty much.
24 I think it was brand new.

1 A. Um, no.

2 Q. Prior that night?

3 A. No.

4 Q. Did you ever see Jeff in a fight?

5 A. Well, yeah, actually.

6 Q. Fist-fight?

7 A. Yeah, I have once.

8 Q. Where?

9 A. It was in Harvard.

10 Q. Where in Harvard?

11 A. Right in the center, actually. At a
12 kid's house. It's right across from the
13 school. His name is Bob West.

14 Q. Was Jeff drinking that night?

15 A. Ah, actually I don't know. I was
16 inside the house. And I came out, and he was
17 there along with -- my brother was there. It
18 was actually -- the fight actually happened --
19 Bob West, he's a year older than me. And my
20 brother's a year older than him. So when I was
21 in, you know, say 9th grade, Bob would be in
22 10th grade. My brother was in 11th.

23 And Bob West was dating this girl
24 from my grade. Her name was Ashley Vallente.

1 Q. Did Jeff work?

2 A. Um, not that I knew of.

3 Q. Did you ever talk to him about how he
4 supported himself?

5 A. No.

6 Q. Did anyone ever tell you how he
7 supported himself?

8 A. No.

9 Q. Did you ever see Jeff use a credit
10 card?

11 A. Nope.

12 Q. Prior to that night, September 26,
13 2003, had you ever seen Jeff when you believed
14 he was under the influence of alcoholic
15 beverages?

16 A. I'd seen him at the party that I
17 mentioned before. I mean, I'd seen him
18 drinking. I don't know if I can say that I've
19 seen him drunk. I don't think I can, for a
20 fact.

21 Q. But my question is, have you ever
22 seen him exhibiting what you understood or
23 interpreted to be signs of being under the
24 influence of alcoholic beverages?

1 And my brother liked her. And, you know,
2 eventually somehow -- I don't -- a lot of
3 tension was between my brother and Bob West.
4 And now my brother is dating Ashley.

5 But I know that there is a lot --
6 they don't like to ever see each other, talk to
7 each other. They don't ever talk about
8 anything. But I know that my brother and Jeff
9 were there. And there were other people. I
10 can't -- I don't remember really who else was
11 there.

12 And, you know, Bob, like -- when I
13 came outside, they were all in the driveway.
14 And Bob West and a few of his friends, they had
15 been drinking, you know. Very well -- I'd say,
16 he was probably drunk. He was telling, you
17 know, my brother -- and specifically he was
18 telling my brother that he couldn't be there
19 and that, you know, basically anyone that was
20 with him wasn't allowed there.

21 And, you know, what sort of happened
22 was, like, you know, whenever there's a party
23 in Harvard, Bob West and his friends would go
24 there. And no one would ever tell them that

1 they couldn't be there.

2 So a little bit of a conflict. They
3 were saying, Oh, there's no reason that I can't
4 be here, blah, blah, blah. I don't even know
5 who, like, threw the first punch or whatever.
6 I know that Jeff was on crutches at the time.
7 And somehow a fight broke out.

8 Q. When was this?

9 A. This was probably the summer of --
10 2002? Yes.

11 Q. Okay.

12 A. Maybe towards the winter, a little
13 towards the winter.

14 Q. Do you know why he was on crutches?

15 A. No, I don't. I kind of assumed it
16 was maybe dirt-biking, but I'm not positive.

17 Q. Okay. Have you ever met Jeff's
18 father?

19 A. No, I haven't.

20 Q. Have you ever met his mother?

21 A. Yes.

22 Q. When is the last time you spoke to
23 her?

24 A. I spoke to her on the phone very

1 anything else. Thank you. At least right now.

2 CROSS EXAMINATION

3 BY MR. SULLIVAN:

4 Q. My name is Jim Sullivan. I represent
5 Mr. Southworth in this case. I just have a few
6 follow-up questions for you. Just give me a
7 second to take a look at my notes.

8 A. All right.

9 Q. You were asked some questions earlier
10 about Jeff's father's old boat?

11 A. Okay.

12 Q. And I think you indicated that you
13 thought that Jeff may have become the owner of
14 that old boat, correct?

15 A. Yes.

16 Q. What did you base that on?

17 A. Well, um, I remember Jeff showing me
18 the pictures of it and saying, This is my dad's
19 boat and, you know, I want to get it, and he's
20 getting a new one. I kind of just figured, you
21 know, his dad is getting a new boat.

22 I don't think he would have any --
23 maybe if he's collecting them, he'd kept the
24 other one, but he never told me anything about

1 briefly when she called looking for my brother.
2 But the last time I actually spoke to her
3 was -- she -- Jeff left at my house underneath
4 our garage, we left his -- the cap to his
5 truck. Because we took it off to throw the
6 dirt bikes in. They didn't fit with it on
7 there.

8 And his mother was selling his truck
9 after everything happened. This was, you know,
10 earlier, the spring, I believe. And his mother
11 came to pick it up with the buyer of the truck,
12 and you know, because they were going to buy it
13 for, you know, an extra, whatever, 500 bucks or
14 something. But they all came down to pick it
15 up. And that was the last time I had seen her
16 and really spoke to her.

17 Q. Did you speak to her about the
18 accident at all?

19 A. No, I didn't.

20 Q. Have you ever spoken to Jeff's
21 sister?

22 A. No. I didn't even know he had a
23 sister.

24 MR. FARRAH: I don't think I have

1 his dad collecting boats.

2 I kind of just assumed that, you
3 know, his son was into it; if my dad had a boat
4 and he was getting a new boat, I'd, you know --
5 and I was into boats, I just kind of base it on
6 a situation like that, you know.

7 Q. But it's more of an assumption?

8 A. Yes. But I do remember him saying
9 that, Oh, I want to get this boat from my dad;
10 he's getting a new one.

11 Q. Did Jeff ever tell you that his
12 father had transferred the title to the boat
13 over to him?

14 A. No.

15 Q. Did he ever indicate that his father
16 had ever signed any papers transferring the
17 boat to him?

18 A. No.

19 Q. You testified that Jeff had taken
20 off -- when you were at the apartment
21 complex -- that Jeff had taken off with Scott's
22 keys?

23 A. Yes.

24 Q. Why did Jeff have Scott's keys that

1 night?

2 A. Well, I mean, he didn't have them on
3 him. They were -- I'm pretty sure, like -- I
4 always take off my cell phone and my wallet and
5 stuff and just throw it somewhere in the truck
6 when we're dirt-biking, just so I know it's in
7 a safe spot. I'm pretty sure that's what Scott
8 was doing also. Just never grabbed them.

9 Q. They didn't have any discussion
10 earlier about --

11 A. No.

12 Q. -- Jeff taking Scott's keys or
13 anything like that?

14 A. No, no, no.

15 Q. Now, at the time Jeff left the
16 apartment complex, did you have an
17 understanding of what his destination was to
18 be?

19 A. Yes. I mean, he said he was going
20 home. So I assumed that he was going to
21 Portsmouth, back to his house.

22 Q. You and Scott were intending to go
23 back to Harvard?

24 A. Yeah, that's correct.

1 the hall, like, right between the elevator and
2 the room. We were actually talking. There
3 was, like -- that weekend, there was a big
4 festival going on in Fitchburg. The hotel is
5 right next to the airport.

6 Q. Okay.

7 A. And they have a big rock show. There
8 was, like, a local bazooka or something, some
9 sort of concert. And they were -- in, like,
10 the room next to the room that we were in front
11 of, that the two kids were staying in, there
12 was two body -- or two -- they were like
13 guards, or bodyguards for two -- or a band that
14 was going to be playing there. And that's
15 where they got the idea to go to The Other
16 Side. These guys gave them passes and stuff.
17 They were there. They were drinking, you know.

18 Q. Excuse me. When you say they gave
19 him the passes, they gave the passes to who?

20 A. They gave all of us passes.
21 Actually, I still have one if you want to see
22 it.

23 Q. Sure.
24 (Pause.)

1 Q. Do you know how long a drive it is
2 from the apartment complex in Littleton to
3 Harvard, approximately?

4 A. Um, to Harvard or to, like, the
5 center, to my house?

6 Q. To your house.

7 A. Twelve minutes maybe, 10 minutes.

8 Q. How far approximately, if you know,
9 is it from that apartment complex to Portsmouth
10 where Jeff was going?

11 A. Like an hour and a half.

12 Q. You mentioned that when you were at
13 the Four Points you saw Jeff with a can of
14 beer?

15 A. Yes.

16 Q. Do you know where that can of beer
17 came from?

18 A. Um, no, I don't. I know that we were
19 standing out right in front of the room that
20 the two friends of Mike and Todd that were
21 either from out of town or -- but they were
22 staying in that room. I kind of thought that,
23 you know, that they came from their room.

24 I know that we were out in front of

1 A. But the two band bodyguards or
2 whatever they were, security guards, they
3 somehow had been in touch with either the owner
4 or something. And they got free, a bunch,
5 like, a big -- they had a big stack of free
6 passes, and they handed them out to everyone.
7 Jeff, myself, Scott, Mike, everyone that we
8 were with. This is it (passing document).
9 (Pause.)

10 A. You can keep it if you would like. I
11 don't need it.

12 Q. That's okay.

13 MR. FARAH: Why don't we make a
14 picture of it. In fact, can we take a
15 five-minute break?

16 MR. SULLIVAN: Sure.

17 (Recess taken.)

18 (Exhibit No. 2 marked for
19 identification.)

20 Q. So before we took a break, I think
21 you were telling me how the security people had
22 given the passes to The Other Side, correct?

23 A. Yes. They were right out with
24 everyone, you know, the group of us, Scott,

1 myself, Mike, Jeff, you know, the two other
 2 kids -- don't know their names -- and the two
 3 security guards.

4 Q. And we've marked the copy of the pass
 5 that you gave us earlier as Exhibit 2, correct?

6 A. All right.

7 Q. Now, the two kids whose names you
 8 can't remember, do you know why they were
 9 staying at the Four Points?

10 A. No. I know that they were from --
 11 that one of them was -- or at least one of
 12 them -- I'm assuming they're from the same
 13 town -- they're from Vermont. I don't know
 14 really where. I know that they were also
 15 dirt-bikers. No, but I don't know why they
 16 were in town.

17 Q. Do you know if they were friends of
 18 Jeff as well as of Mike Espy?

19 A. Well, no, I don't know the actual
 20 scenario. I know that he seemed comfortable
 21 and didn't see -- didn't greet them and say
 22 Hey, it's nice to meet you. So I kind of
 23 assumed that he knew them.

24 Q. He, being Jeff?

1 A. Yes, yes. But no, I don't -- you
 2 know, they never met, you know, formally
 3 greeted each other or anything. I just assumed
 4 that they knew each other because they were,
 5 you know, everyone sort of knew each other,
 6 except I didn't know them.

7 Q. All right. And at the point that the
 8 decision was made to go from the LongHorn to
 9 the Four Points, what was the reason for going
 10 to the Four Points?

11 A. Well, I know that the two -- the two
 12 people that I don't know, they had to go back
 13 to their room or something. And Todd and Mike
 14 were with them. Like, they drove them to the
 15 LongHorn, or at least Todd drove his car with
 16 them to the LongHorn. Mike was with them.
 17 They came. But he had to bring them back to
 18 the hotel because he brought them there.

19 Q. Okay. That was the only reason for
 20 going to the Four Points, just to drop these
 21 two guys off?

22 A. That I know of.

23 MR. SULLIVAN: That is all I have for
 24 you. Thank you.

1 CROSS EXAMINATION

2 BY MR. LANE:

3 Q. Just a couple of quick questions,
 4 Mr. Connelly. My name is Tom Lane, and I
 5 represent Enterprise Rent-a-Car Company of
 6 Boston, Incorporated. You mentioned that
 7 Mr. Southworth was driving a Dodge Dakota on
 8 this day?

9 A. Yes.

10 Q. Do you have any knowledge as to how
 11 he came to be in possession of that vehicle?

12 A. I know that he rented it. I don't
 13 know, um, you know -- he said -- he called me,
 14 or I talked to him earlier on in the day. He
 15 said, you know, he was coming to go
 16 dirt-biking, you know. I didn't even know that
 17 he had a rental truck. I just figured he had
 18 his truck, or that his truck was in the shop or
 19 something, and that he somehow rented a truck.

20 Q. You learned that his car was in the
 21 shop that day?

22 A. Um, no. I mean, I don't recall. I
 23 kind of, you know, I guess I probably asked
 24 him, said or, you know, someone said, you know,

94 1 A. Yes, yes. But no, I don't -- you
 2 know, they never met, you know, formally
 3 greeted each other or anything. I just assumed
 4 that they knew each other because they were,
 5 you know, everyone sort of knew each other,
 6 except I didn't know them.

7 Q. All right. And at the point that the
 8 decision was made to go from the LongHorn to
 9 the Four Points, what was the reason for going
 10 to the Four Points?

11 A. Well, I know that the two -- the two
 12 people that I don't know, they had to go back
 13 to their room or something. And Todd and Mike
 14 were with them. Like, they drove them to the
 15 LongHorn, or at least Todd drove his car with
 16 them to the LongHorn. Mike was with them.
 17 They came. But he had to bring them back to
 18 the hotel because he brought them there.

19 Q. Okay. That was the only reason for
 20 going to the Four Points, just to drop these
 21 two guys off?

22 A. That I know of.

23 MR. SULLIVAN: That is all I have for
 24 you. Thank you.

1 Where is your truck, or something, and he said,
 2 you know -- I remember learning that his car
 3 was in the shop. I just don't exactly remember
 4 when I learned it.

5 Q. Do you recall when you had last gone
 6 dirt-biking with him before this date?

7 A. Not specifically. It was probably
 8 the week before maybe, that weekend before.

9 Q. The last time you had seen him, did
 10 he have his own truck, or did he have the
 11 rental truck?

12 A. He had, yeah, he had his truck.

13 Q. Okay. Is it fair to say that was the
 14 first day you saw him with the rental truck?

15 A. Yes.

16 Q. At some point, you found out that his
 17 car was in the shop?

18 A. Mm-hmm, that's correct.

19 Q. But you don't have any knowledge as
 20 to where he rented the rental truck?

21 A. No. Well, yes. No, I didn't know.

22 Q. Do you know now where he rented it?

23 A. Yes. Enterprise.

24 Q. Is that because of the questions in

1 today's deposition?
 2 A. Yes. Well, when I received the
 3 envelope in the mail, that said Enterprise. So
 4 I assume Enterprise.
 5 Q. Just so we're clear, the paperwork
 6 referring to your deposition today?
 7 A. Yes.
 8 Q. Have you given a statement to anyone
 9 about the happening of the accident?
 10 A. Yes. I -- it was -- I don't remember
 11 the officer's name. It was the State Police in
 12 Concord. He called me up one day and asked --
 13 said, You need to talk to me about, you know,
 14 Jeff Southworth and what happened that night.
 15 And he said that, I could either come out to
 16 the office or I could go out to Concord. I
 17 said, Sure, I'm coming out.
 18 I went out there, and he had me make
 19 a statement, and I wrote it down. First he,
 20 like, had me -- or describe it to him, and then
 21 I wrote it down. And I'm pretty sure that
 22 Scott Espy did the same with the same officer.
 23 Q. And that was with the Concord State
 24 Police?

1 A. Yes.
 2 Q. Is that the only statement you've
 3 ever given about this incident?
 4 A. Yes.
 5 Q. You testified in front of the grand
 6 jury?
 7 A. Yes.
 8 Q. Have you testified anywhere else
 9 about this incident?
 10 A. No.
 11 Q. Have you ever spoken to any insurance
 12 representatives at all about the incident?
 13 A. No.
 14 Q. Do you have any knowledge -- I know
 15 Mr. Farrah asked you about Mr. Southworth's
 16 Massachusetts license. Do you have any
 17 knowledge that he had a New Hampshire license
 18 to operate motor vehicles?
 19 A. No. Well, I mean, I don't have
 20 any -- no. I mean, I assume he did.
 21 Q. Okay. Why did you assume that he had
 22 a New Hampshire license?
 23 A. Well, he lived in New Hampshire, and
 24 so I kind of assumed that he'd have a license

1 for the state that he lived in.
 2 Q. Did you ever see that New Hampshire
 3 license at all?
 4 A. No.
 5 Q. You mentioned before, a little bit,
 6 testifying as to why different people would
 7 drive Mr. Southworth's vehicle. And is it fair
 8 to say your understanding was that he just
 9 didn't want people in Harvard seeing him
 10 driving a car?
 11 A. Yes.
 12 Q. He never told you that he wasn't
 13 licensed in Massachusetts?
 14 A. No.
 15 MR. LANE: I have no further
 16 questions.
 17 MR. FARRAH: I think I'm done. Thank
 18 you very much for coming in.
 19 THE WITNESS: No problem.
 20 (Whereupon, the deposition was
 21 concluded at 11:37 a.m.)
 22
 23
 24

98

100

1 SIGNATURE PAGE/ERRATA SHEET
 2 Re: Nancy Rosario, et al.
 3 Vs: Jeffrey Southworth, et al.
 4 08/19/04: Deposition of Jude P. Conelly

5 I, JUDE P. CONELLY, do hereby certify
 6 that I have read the foregoing transcript of my
 7 testimony and that it is a true and accurate
 8 record of my testimony (with the exception of
 9 the corrections listed below):

Page	Line	Correction
10	—	—
11	—	—
12	—	—
13	—	—
14	—	—
15	—	—
16	—	—
17	—	—
18	—	—
19	—	—

20
 21 Signed under the pains and penalties of
 22 perjury this ____ day of _____,
 23 2004.

24 JUDE P. CONELLY

1 CERTIFICATE
2 Commonwealth of Massachusetts
3 Suffolk, ss.
4 I, Alene M. Jennette, Certified Shorthand
5 Reporter and Notary Public in and for the
6 Commonwealth of Massachusetts, do hereby
7 certify that JUDE P. CONELLY, the witness whose
8 deposition is hereinbefore set forth, was duly
9 sworn by me and that such deposition is a true
10 record of the testimony given by the witness.
11 I further certify that I am neither related
12 to or employed by any of the parties in or
13 counsel to this action, nor am I financially
14 interested in the outcome of this action.
15 In witness whereof, I hereunto set my hand
16 and seal this ____ day of _____, 2004.
17
18
19 Notary Public, CSR
20 My commission expires:
21 April 9, 2010
22
23
24

1 Volume: I
 2 Pages: 1-179
 3 Exhibits: 1-4

4 UNITED STATES DISTRICT COURT
 5 DISTRICT OF MASSACHUSETTS
 6 *****
 7 NANCY ROSARIO, INDIVIDUALLY, AS *
 8 SHE IS THE ADMINISTRATRIX OF THE *
 9 ESTATE OF AWILDA SANTIAGO, ESSEX *
 10 PROBATE COURT #03P-2499AD1, P/P/A *
 11 VERONICA ROSARIO AND CHRISTINA *
 12 SANTIAGO, AND AS SHE IS THE *
 13 ADMINISTRATRIX OF THE ESTATE OF *
 14 JOSE SANTIAGO, BERLIN (CONNECTICUT) *
 15 PROBATE COURT, CASE #03-0713, *
 16 Plaintiff,
 17 VS * C.A. No.
 18 RARE HOSPITALITY INTERNATIONAL, * 05-CV-10617MLW
 19 INC. d/b/a LONGHORN STEAKHOUSE, *
 20 Defendant *
 21 *****
 22 DEPOSITION OF JUDE CONNELLY, a witness
 23 called on behalf of the Plaintiff, taken
 24 pursuant to Notice under the applicable
 provisions of the Federal Rules of Civil
 Procedure, before Barbara J. Simon, a
 Professional Shorthand Reporter and Notary
 Public, in and for the Commonwealth of
 Massachusetts, at the law offices of Albert L.
 Farrah, Jr., One Washington Mall, Boston,
 Massachusetts, on Friday, February 10, 2006,
 commencing at 10:15 a.m.
 SHEA COURT REPORTING SERVICES
 (617) 227-3097

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Page 3
 1 I N D E X
 2 WITNESS DIRECT CROSS REDIRECT RECROSS
 3 JUDE CONNELLY
 4 (By Mr. Farrah) 4 171
 5 (By Mr. Gillis) 143 172
 6
 7 E X H I B I T S
 8 NO. DESCRIPTION PAGE
 9 1 Floor plan 17
 10 2 Bar bill 26
 11 3 Written statement 42
 12 4 Affidavit 61
 13
 14 (The exhibits were retained by Mr. Farrah.)
 15
 16
 17
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 15
 16 Also Present:
 17 Neil Schnurbach, Esq.
 18 Ann Rudy
 19
 20
 21
 22
 23
 24

Page 2
 1 P R O C E E D I N G S
 2
 3 JUDE CONNELLY, having been satisfactorily
 4 identified and duly sworn, on oath, deposes and
 5 says as follows:
 6
 7 D I R E C T E X A M I N A T I O N
 8
 9 BY MR. FARAH:
 10 Q. Just for the record, could you tell us your
 11 name, please?
 12 A. Jude Connelly.
 13 Q. Mr. Connelly, my name is Albert Farrah and I
 14 represent the plaintiff, Nancy Rosario, in
 15 various capacities in this lawsuit.
 16 Counsel have agreed that you will have a
 17 copy of your transcript delivered to you and
 18 that you will have thirty days from the date of
 19 your receipt of that transcript to note, in
 20 writing on a sheet of paper that will accompany
 21 the transcript, any errors that you feel were
 22 made in the transcription of your testimony,
 23 and you'll need to return that errata sheet to
 24 me within thirty days of your receipt in order

Page 5

1 for the notations to have any effect in this
 2 case.
 3 Otherwise, your transcript will be deemed
 4 accurate if we don't receive that back from you
 5 within thirty days -- the errata sheet. Do you
 6 understand that?
 7 A. Yes.
 8 Q. Tell us, please, where you live.
 9 A. Harvard, Massachusetts.
 10 Q. What is the address?
 11 A. Fifteen Lovers Lane.
 12 Q. And how old are you?
 13 A. I am twenty years old.
 14 Q. What is your date of birth, sir?
 15 A. March 23, 1985.
 16 Q. And are you currently in school?
 17 A. I am.
 18 Q. Where?
 19 A. Fitchburg State College.
 20 Q. Is that full time?
 21 A. Full time.
 22 Q. And do you work?
 23 A. Yes.
 24 Q. Where do you work?

1 A. Yes.
 2 Q. Was that on September 26, 2003?
 3 A. Yes, I believe so.
 4 Q. Calling your attention to that day, September
 5 26, 2003, do you recall where you were dirt
 6 biking with Mr. Southworth that day?
 7 A. I do.
 8 Q. Where was that?
 9 A. It was in Templeton, Massachusetts.
 10 Q. Is there a particular location at Templeton
 11 that you were dirt biking? Does it have a
 12 name?
 13 A. It doesn't have a name. It is just a sand pit,
 14 if you want to call it that.
 15 Q. A sand pit?
 16 A. Yes.
 17 Q. Do you know what time you arrived at the sand
 18 pit that day?
 19 A. Early afternoon, maybe 2:00, 3:00.
 20 Q. How did you get there that day?
 21 A. I went to Templeton with my brother.
 22 Q. What is your brother's name?
 23 A. Dylan Connelly.
 24 Q. And when you arrived at the sand pit that day,

Page 6

Page 8

1 A. I work at a small convenience store in Bolton.
 2 Q. What is the name of that store?
 3 A. Country Cupboard.
 4 Q. Calling your attention back to the year 2003,
 5 did you know a person named Jeffrey Southworth?
 6 A. Yes.
 7 Q. Can you tell us approximately when it was that
 8 you first met Mr. Southworth?
 9 A. I believe it was some time in the summer of
 10 2002.
 11 Q. Do you know the setting, where you met him?
 12 A. Not particularly.
 13 Q. During the summer of 2003, did Mr. Southworth
 14 and you engage in any dirt biking activities
 15 together?
 16 A. Yes.
 17 Q. Can you tell me approximately how many times
 18 during the summer of 2003 Mr. Southworth and
 19 you were dirt biking together?
 20 A. I would say about a dozen times.
 21 Q. And on one of those occasions after dirt
 22 biking, did Mr. Southworth and you go to the
 23 Longhorn Steakhouse in Leominster,
 24 Massachusetts?

1 was Jeffrey Southworth there?
 2 A. No, he was not.
 3 Q. At some point in time, did he arrive at the
 4 sand pit? Did you see him there?
 5 A. Yes.
 6 Q. And by the way, if you just nod, we won't have
 7 a record of your answers. So you need to say
 8 your answer.
 9 When you first saw him, was he in the
 10 company of anyone else?
 11 A. Yes.
 12 Q. Who was that?
 13 A. Scott Espy.
 14 Q. Did you know Mr. Espy prior to September 26,
 15 2003?
 16 A. I did.
 17 Q. Did you know him in a dirt biking setting?
 18 A. I did.
 19 Q. And others?
 20 A. Yes.
 21 Q. For how long did you remain dirt biking at the
 22 sand pit in Templeton that day?
 23 A. We were there until about dark, although I
 24 stopped dirt biking a little bit before.

	Page 9	Page 11
1	Q. Before what?	1 Q. Were there any pets in that motor vehicle?
2	A. Before Jeff and Scott finished. My brother	2 A. There were. There were two dogs.
3	actually took my dirt bike with him back to	3 Q. Whose dogs were they?
4	school when he left.	4 A. They were Jeff's.
5	Q. So you said you arrived with your brother, and	5 Q. And what was the layout of people and pets in
6	did you arrive in your brother's motor vehicle?	6 the motor vehicle on the trip from the sand pit
7	A. Yes.	7 to the Longhorn Steakhouse?
8	Q. And did your brother leave Templeton, the sand	8 A. I believe I was sitting in the back with the
9	pit, at some point in time that day?	9 two dogs, and Jeff and Scott were in the front.
10	A. Yes.	10 Q. Who was driving?
11	Q. When did he leave, approximately?	11 A. Jeff was.
12	A. Around 6:00.	12 Q. And at approximately what time did you arrive
13	Q. And did he take your dirt bike with him that	13 at the Longhorn Steakhouse?
14	day when he left around 6:00?	14 Let me ask the question another way.
15	A. Yes.	15 Approximately, how long did it take you to get
16	Q. So you stopped dirt biking at that point; is	16 to the Longhorn Steakhouse from Templeton?
17	that right?	17 A. About half an hour.
18	A. Yes.	18 Q. And when you arrived at the Longhorn
19	Q. At what time did Mr. Southworth stop dirt	19 Steakhouse, where did you go? Where did you
20	biking?	20 first go?
21	A. It was right around when it got dark. I don't	21 A. We went in and we put our name in for a table,
22	specifically remember.	22 and it was busy. So we went over to the bar to
23	Q. And at some point in time, did you leave the	23 wait for the table.
24	Templeton sand pit that day?	24 Q. That was the three of you -- Jeff, yourself and
	Page 10	Page 12
1	A. We did.	1 Mr. Espy?
2	Q. And did you leave in the company of anybody?	2 A. Correct.
3	A. I left with Jeff and Scott.	3 Q. At the bar, did you see Mr. Southworth drinking
4	Q. And approximately when was it that you left?	4 at all?
5	A. I know it was just getting dark or just shortly	5 A. I did.
6	after, maybe around 7:00.	6 Q. What did you see him drinking?
7	Q. And prior to leaving the sand pit in Templeton,	7 A. I saw him drinking a beer.
8	did you see Jeffrey Southworth have any	8 Q. And do you know how many beers Mr. Southworth
9	alcoholic beverages?	9 had at the bar that day?
10	A. No.	10 A. I remember him having one.
11	Q. Did all of you leave the sand pit together --	11 Q. Do you remember testifying at a deposition in
12	Jeffrey Southworth, Mr. Espy and yourself?	12 this case or in a related case back in August
13	A. We did.	13 of 2004?
14	Q. And in whose motor vehicle did you leave the	14 A. I do.
15	sand pit?	15 Q. And do you remember being asked the question --
16	A. It was Jeff's. I believe it was a rented	16 Let me show you the bottom here on page 28 at
17	truck.	17 Line 22.
18	Q. And where did the three of you go?	18 "Do you know whether or not Jeff had more
19	A. We went to the Longhorn Steakhouse.	19 than one beer while he was at the bar?"
20	Q. And were there any other persons in the motor	20 Do you see that question?
21	vehicle, the rented truck, other than Jeff	21 A. Yes, I do.
22	Southworth, Mr. Espy and yourself, on the trip	22 Q. Do you remember that your answer was, "You
23	from the sand pit to the Longhorn Steakhouse?	23 know, I think he did. I'm not -- I don't know
24	A. No, there were not.	24 for a fact but, you know, he probably did."

1 Do you see that?
 2 A. I see that.
 3 Q. So is it your best memory today that he
 4 probably had more than one beer while he was
 5 drinking at the bar?
 6 MR. GILLIS: Objection.
 7 A. I don't know. I don't remember. I remember
 8 him ordering one beer.
 9 Q. Do you have any explanation for why you
 10 testified on August 19, 2004 that he probably
 11 had more than one beer?
 12 MR. GILLIS: Objection. That's not his
 13 testimony.
 14 He said on 28 he had a beer, and then you
 15 asked him further when you were unhappy with
 16 the answer, and he said "maybe."
 17 His testimony isn't ever that he had more
 18 than one beer.
 19 MR. FARAH: His testimony is his
 20 testimony, and his testimony is in response to
 21 the question, "Do you know whether or not Jeff
 22 had more than one beer while he was at the
 23 bar?"
 24 His testimony is, "You know, I think he

Page 13

1 did. I'm not -- I don't know for a fact, but,
 2 you know, he probably did."
 3 MR. GILLIS: That's taken out of context.
 4 You're not bringing the whole statement in on
 5 28 when you asked him, "What did you see him
 6 drinking?" He said "A beer."
 7 If you're going to ask him a question,
 8 give him the whole sequence. Don't take it out
 9 of order.
 10 MR. FARAH: Motion to strike. You can
 11 ask him what you want to ask him.
 12 Q. My question to you is, do you have any
 13 explanation for why you testified on August 19,
 14 2004 that you think he had more than one beer
 15 at the bar?
 16 MR. GILLIS: Where did you say he said he
 17 thinks he had more than one beer at the bar?
 18 MR. FARAH: I'm looking at 22 through 24.
 19 MR. GILLIS: 22 to 23 is a question.
 20 Maybe I'm missing something. On page 29, Lines
 21 21 to 24 I don't see anywhere -- What line are
 22 you saying that he said he had more than one
 23 beer as opposed to you asking a question?
 24 Q. On page 28, Line 22, the question is, "Do you

Page 13

1 know whether or not Jeff had more than one beer
 2 while he was at the bar?"
 3 The answer is, "You know, I think he did."
 4 So my question --
 5 MR. GILLIS: What page are you on?
 6 MR. FARAH: I'm on page 28.
 7 MR. GILLIS: Line?
 8 MR. FARAH: 22.
 9 MR. GILLIS: Again, I object. If you're
 10 going to ask him a question, ask him to read
 11 the whole page because you're just taking
 12 things out of context.
 13 Q. For the third time, can you explain why you
 14 testified back in August of 2004 that you
 15 thought Jeff had more than one beer while he
 16 was at the bar?
 17 A. I guess I said it because I think it could have
 18 been possible.
 19 Q. Can you explain why in August of 2004 you
 20 testified that he probably -- on top of page
 21 29 -- that he probably had more than one beer
 22 while he was at the bar?
 23 MR. GILLIS: Objection.
 24 Q. You can answer.

Page 14

1 A. I don't.
 2 Q. Fair enough. At some point in time, were you
 3 seated at a table?
 4 A. Yes, we were.
 5 Q. And by the way, while you were at the bar, how
 6 far away were you from Jeff?
 7 A. I don't remember.
 8 Q. Do you remember what part of the bar you were
 9 seated at or standing at?
 10 A. Not particularly. I kind of remember it being
 11 somewhat busy and us not having seats.
 12 Q. But you don't remember what section of the bar?
 13 A. I don't.
 14 Q. I'm going to show you what has been marked as
 15 Exhibit 1 in your earlier deposition.
 16 Do you recall looking at that floor plan
 17 at some point in time?
 18 A. Yes.
 19 Q. Do you recall circling the area where the "3"
 20 is located as the area where Jeff, you and
 21 Mr. Espy were at the bar?
 22 A. Yes.
 23 Q. Does that refresh your memory about what part
 24 of the bar the three of you were at on that

Page 14

Page 15

Page 17

1 night?
 2 A. It does.
 3 Q. Is it accurate to say that you were at the area
 4 circled with a "3" and an arrow pointing to it
 5 on Exhibit 1 of your earlier deposition?
 6 A. Yes.
 7 MR. FARRAH: Can we mark that as Number 1
 8 in this deposition?
 9
 10 (Exhibit Number 1 was marked for
 11 identification.)
 12
 13 Q. Do you recall what the bartender or bartenders
 14 who served you at the bar looked like that
 15 night?
 16 A. I don't.
 17 Q. Do you remember testifying that it was a woman,
 18 you thought, with blonde hair who had served
 19 you that night?
 20 A. I don't know whether she was at the bar or
 21 serving a table. I remember a female that I
 22 thought had blonde hair.
 23 Q. Could you turn to page 31? Read the first
 24 seven or eight lines of page 31 to yourself.

1 hair.
 2 His testimony is, "I don't remember. I
 3 just remember seeing blonde hair." Read the
 4 whole answer.
 5 MR. FARRAH: For the record, "Do you know
 6 who served Jeff at the bar?"
 7 "Answer: I mean, the bartender I remember
 8 it was a girl?
 9 "Question: Woman? Women?
 10 "Answer: Yes. I don't specifically
 11 remember. I think she had blonde hair. I just
 12 remember seeing blonde hair."
 13 Q. By the way, is it your best memory as you sit
 14 here now that while he was at the bar, Jeffrey
 15 Southworth had more than one beer?
 16 MR. GILLIS: Objection, asked and
 17 answered.
 18 Q. You can answer.
 19 MR. GILLIS: If you know.
 20 Q. Read on page 30 the question that begins on
 21 Line 15 to yourself and then your answer.
 22 (Witness reviews document.)
 23 Q. I want to ask you this question. Is it your
 24 best memory as you sit here now that while he

Page 18

1 (Witness reviews document.)
 2 A. Okay.
 3 Q. Does that refresh your recollection that it was
 4 a blonde woman who waited on you at the bar?
 5 A. I don't remember. I mean, I guess so.
 6 Q. Okay. For the record, you were asked the
 7 question --
 8 MR. GILLIS: For the record, we want an
 9 accurate transcript. So we'd prefer your best
 10 memory, but if you're guessing, please don't do
 11 that.
 12 Neither Mr. Farrah nor I want you to guess
 13 at answers you don't know.
 14 A. I honestly don't remember.
 15 Q. Do you recall testifying that you thought the
 16 woman who served you at the bar had blonde
 17 hair; is that right?
 18 MR. GILLIS: Objection. I think his
 19 testimony was that he didn't specifically
 20 remember.
 21 Q. "I think she has blonde hair," is what it says
 22 there. "I just remember seeing blonde hair."
 23 MR. GILLIS: Read the whole answer. His
 24 testimony isn't that he saw a woman with blonde

Page 20

1 was at the bar, Jeff Southworth had more than
 2 one beer?
 3 MR. GILLIS: Objection.
 4 A. No.
 5 Q. Do you recall that you were asked that question
 6 at your deposition?
 7 A. Yes.
 8 Q. And that your answer at that time was, "I'd say
 9 so, yes"?
 10 A. Yes.
 11 Q. Do you have any explanation for why your answer
 12 today is different from your testimony back in
 13 August of 2004?
 14 A. To be honest with you, after looking at the
 15 receipt for the bill, I'm pretty sure that
 16 there could be no way that he had more than one
 17 beer at the bar.
 18 Q. Did you see the receipt for the bar?
 19 A. I believe the bill for the bar was with the
 20 bill for the table.
 21 Q. What makes you say that?
 22 A. That's as I remember that.
 23 Q. When did you see the receipt for the bill?
 24 A. Maybe a month ago.

	Page 21	Page 23
1	Q. Where did you see it?	1 Q. You gave some testimony?
2	A. When I met with John DiNatale.	2 A. Yes.
3	Q. A private investigator?	3 Q. He showed you that?
4	A. Yes.	4 A. Yes.
5	Q. What did Mr. DiNatale say to you?	5 Q. Was that accurate?
6	A. He just wanted to go over what I had said in	6 A. Yes.
7	some of the depositions and show me the receipt	7 Q. Was your deposition accurate in August of 2004?
8	for the bar, and just tell me when I come in	8 MR. GILLIS: Which part? You asked the
9	here to tell the truth and if I don't know the	9 same question at the deposition five times, and
10	answer, don't speculate; just only say what I	10 you kept asking it because you didn't like the
11	know.	11 answer.
12	Q. Okay, and you didn't speculate when you	12 So if you're going to ask him if it's
13	testified at your deposition, did you?	13 accurate, which time? The time when he said he
14	MR. GILLIS: Objection. The prior one	14 had only one beer or the time you asked him
15	you're referring to?	15 three pages later?
16	MR. FARRAH: Either deposition.	16 Q. Was your deposition accurate?
17	A. I suppose I may have.	17 MR. GILLIS: Which part?
18	Q. You speculated at your deposition?	18 MR. FARRAH: Any part.
19	A. Well, I don't think I was making things up, but	19 A. I believe so, yes.
20	when I say I don't exactly remember, this could	20 MR. FARRAH: Now, I just want to stop for
21	have been the case.	21 a second. I'll be right back. I want the
22	I remember one thing, but certainly	22 receipt of what Mr. DiNatale showed you.
23	another thing could have happened.	23 (Off the record.)
24	Q. When you testified on August 19, 2004, you were	24 Q. Back on the record. Back to Mr. DiNatale, did
	Page 22	Page 24
1	sworn to tell the truth before you testified;	1 he tell you who he was working for?
2	isn't that right?	2 A. He did. I know he's working for one of the law
3	A. Yes.	3 firms. I don't know.
4	Q. Okay, and you did the best you could to tell	4 Q. Did he tell you he was working for Mr. Gillis's
5	the truth at that time; isn't that right?	5 firm? That is the gentleman sitting next to
6	A. Yes.	6 you.
7	Q. Since that time, Mr. DiNatale has seen you; is	7 A. I suppose he did. I honestly don't remember
8	that right?	8 which firm he said he was working for.
9	A. Yes.	9 Q. Before you testified in August of 2004, had any
10	Q. Did he tell you who he was working for?	10 investigators, other than police investigators,
11	A. I can't remember. I know he is working for one	11 spoken to you about your upcoming testimony?
12	of the sides -- one of the law firms.	12 A. No.
13	Q. How long did you spend with Mr. DiNatale?	13 Q. So when you went into that testimony, you
14	A. Maybe twenty minutes.	14 didn't have the benefit of anybody's assistance
15	Q. And he showed you some records?	15 in preparing for the deposition; is that right?
16	A. Yes.	16 MR. GILLIS: Objection.
17	Q. What did he show you?	17 A. Yes.
18	A. He showed me the printout when I was at the	18 Q. But Mr. DiNatale knew that you were coming to
19	grand jury.	19 be deposed in this case; isn't that right?
20	Q. The printout of the bill at the grand jury for	20 MR. GILLIS: Objection.
21	the Longhorn?	21 A. Yes.
22	A. He showed me a printout of the receipt, and	22 Q. He told you to tell the truth at the
23	also when I went into the grand jury in Lowell	23 deposition; isn't that right?
24	before the grand jury.	24 MR. GILLIS: Objection.

1 A. Yes.
 2 Q. And he showed you some documents; is that
 3 right?
 4 A. Yes.
 5 Q. One of the documents he showed you was a
 6 printout of the bar check; is that right?
 7 A. That's right.
 8 Q. I want you to look at this document which is
 9 Exhibit 11 in the Kristin O'Donnell deposition.
 10 It's a few page document. I'd like you to look
 11 at it, if you could. Take a moment.
 12 (Witness reviews document.)
 13 Q. It's Table 52; is that right? Take as long as
 14 you need to look at it to familiarize yourself
 15 with the document.
 16 (Witness reviews document.)
 17 Q. Is that the document that Mr. DiNatale showed
 18 you when you met with him?
 19 A. I think so, yes.
 20 MR. FARAH: That, for the record, is
 21 Exhibit 11 to Ms. O'Donnell's deposition.
 22 Why don't we mark it as Exhibit 2 to this
 23 deposition?
 24

Page 25

1 Q. Based in part on that discussion, you now do
 2 not believe that Jeff Southworth had more than
 3 one beer at the bar; is that right?
 4 MR. GILLIS: Objection.
 5 A. Correct.
 6 Q. That's because there's something in Exhibit 2
 7 that suggests to you that it was an
 8 impossibility that he had more than one beer at
 9 the bar?
 10 MR. GILLIS: Objection.
 11 Q. Is that right?
 12 A. Yes.
 13 Q. What is it about that that Mr. DiNatale pointed
 14 out to you in Exhibit 2?
 15 MR. GILLIS: Objection. You're putting in
 16 evidence that's not there. You're saying what
 17 did he point to, and there's no evidence here
 18 that he pointed to anything.
 19 You can't lead the witness. It's your
 20 deposition.
 21 Q. Did Mr. DiNatale point to something in
 22 Exhibit 2 that led you to conclude that it was
 23 impossible for Jeff to have had more than one
 24 beer at the bar?

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1 (Exhibit Number 2 was marked for
 2 identification.)
 3
 4 Q. Was it just Mr. DiNatale and you who met, and
 5 nobody else?
 6 A. Correct.
 7 Q. Where did you meet with him?
 8 A. He came to my house.
 9 Q. He had called you beforehand to arrange that
 10 meeting?
 11 A. Yes.
 12 Q. Your best memory of when the meeting happened
 13 is when?
 14 A. I believe it was around a month ago.
 15 Q. He gave you his card?
 16 A. Yes.
 17 Q. Do you still have it?
 18 A. Not on me, but I do have it.
 19 Q. Do you remember his first name?
 20 A. I think it's John.
 21 Q. And you and he discussed what now has been
 22 marked as Exhibit 2 in your deposition; is that
 23 right?
 24 A. Yes.

1 A. He asked me what I remembered him having at the
 2 bar, and I told him that I remembered him
 3 having a beer.
 4 It was a possibility that he could have
 5 had more, and I told him I remembered Scott
 6 having a beer as well, and at that point he
 7 said, "There were only two beers ordered. So
 8 where did the third beer come from," and I
 9 said, "I guess it didn't come."
 10 Q. Did Mr. DiNatale show you where there were only
 11 two beers ordered as reflected in what has now
 12 been marked as Exhibit 2 in your deposition?
 13 A. Yes.
 14 Q. Could you show me what he pointed to?
 15 A. There's one at the top of what says page 8, and
 16 the second one is towards the end of page 9
 17 right here.
 18 Q. The one at the top of page 8 -- You said
 19 page 8?
 20 A. Yes.
 21 Q. Is that the very top line on page 8?
 22 A. It is.
 23 Q. It says "\$3.99, twenty-five-ounce Bud Light"?
 24 A. Correct.

1 Q. And to review that, you need to go to the
 2 previous page; is that right?
 3 A. Yes.
 4 Q. That's part of an order that was placed at
 5 8:40 p.m.; is that right?
 6 A. Yes.
 7 Q. So that's one of the references that
 8 Mr. DiNatale pointed out to you about the
 9 beers; is that right?
 10 A. Yes.
 11 Q. And the other reference that Mr. DiNatale
 12 pointed out to you, I think you said was on
 13 page 9; is that right?
 14 A. Towards the end.
 15 Q. Again, we're looking at Exhibit 2 to your
 16 deposition; is that right?
 17 A. Yes.
 18 Q. Do you see it?
 19 A. Yes.
 20 Q. It looks like at 9:15 p.m. there was an order
 21 for a \$3.99 twenty-five-ounce Bud Light?
 22 A. Yes.
 23 Q. So based on Mr. DiNatale showing you the
 24 earlier reference at 8:40 p.m. and the second

Page 29

1 MR. GILLIS: You're asking him to guess
 2 because you don't want the accurate testimony.
 3 I'm just telling him to tell the truth.
 4 If you have a problem with that, then fine.
 5 MR. FARRAH: I have no problem with that.
 6 I'm trying to find out what Mr. DiNatale said
 7 at a later date.
 8 Q. What did Mr. DiNatale tell you about the beer
 9 at 8:40 and the beer at 9:15? What did he tell
 10 you?
 11 A. He told me those were the two beers of the
 12 bill.
 13 Q. Did he say what they meant and what they
 14 reflected?
 15 A. He just said those are reflected, the two beers
 16 that they were drinking.
 17 Q. At the bar?
 18 MR. GILLIS: Objection.
 19 A. I don't know.
 20 Q. Did he say that the two beers that are
 21 reflected on Exhibit 2 to your deposition were
 22 two beers that were served at the bar?
 23 MR. GILLIS: Objection.
 24 A. I don't remember.

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1 reference at 9:15 p.m., you now understand that
 2 it was not possible for Jeff to have had more
 3 than one beer at the bar; is that right?
 4 MR. GILLIS: Objection.
 5 A. I believe so.
 6 Q. Did Mr. DiNatale tell you that what's been
 7 marked as Exhibit 2 to your deposition included
 8 the bill for the beers that were served at the
 9 bar to Jeff and Mr. Espy?
 10 A. He didn't say whether they were or weren't.
 11 Q. Well, if you can tell me what it is about
 12 Exhibit 2 that Mr. DiNatale pointed out to you
 13 that suggested to you that the two beers we've
 14 been talking about, 8:40 and 9:15, were the
 15 beers that were served to them at the bar?
 16 MR. GILLIS: Objection.
 17 A. The fact that I just remember the bar tab being
 18 carried over to the table. I mean, it's
 19 obvious that they're different times, I guess.
 20 I don't know.
 21 Q. I want to know.
 22 MR. GILLIS: If you don't know, say you
 23 don't know, but don't guess.
 24 MR. FARRAH: This is not your witness.

1 Q. Is it accurate to say that you're basing your
 2 testimony that Jeff probably did not have more
 3 than one beer at the bar on Exhibit 2 that
 4 Mr. DiNatale showed you?
 5 MR. GILLIS: Objection.
 6 A. Solely or entire? Can you repeat it one more
 7 time?
 8 Q. Yes.
 9 A. I remember him having a beer at the bar, but
 10 that was at the bar. I remember him having one
 11 beer, you know, throughout the night.
 12 I remember him having a beer, but whether
 13 he ordered another beer, which I don't remember
 14 or not, at the table, that would not be at the
 15 bar.
 16 Q. Do you remember testifying that at the table
 17 Jeff had probably four beers?
 18 MR. GILLIS: Objection.
 19 A. I believe I did. I mean, I think I read that
 20 somewhere.
 21 Q. Your memory of the events back in August of '04
 22 was better than your memory of the events
 23 today; isn't that right?
 24 MR. GILLIS: Objection.

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	Page 33	Page 35
1	A. I guess you can say that.	1 working for the lawyers who are representing
2	Q. And back in August of '04 on Page 38, Line 4 of	2 the Longhorn Steakhouse?
3	your deposition began a series of questions	3 MR. GILLIS: Objection.
4	that you were asked about Jeff drinking at the	4 A. At that time, yes.
5	table.	5 Q. He told you that; isn't that right?
6	Do you recall being asked the question,	6 A. Yes.
7	"While you were at the table, did you see Jeff	7 Q. And while he was at the table, did you also see
8	drinking any alcoholic beverages?"	8 Jeff drinking Manhattans?
9	Do you recall that?	9 A. Yes.
10	A. Yes.	10 Q. How many Manhattans did you see him drink at
11	Q. And your answer was, "Yes."	11 the table?
12	Did you see him drinking any beers?	12 A. I remember him having at least a Manhattan. As
13	A. Yes.	13 of right now, I don't know what I testified to.
14	Q. How many beers, to your best memory, did you	14 Q. Let's read it. Do you see the question
15	see him drink at the table?	15 beginning on page 38, Line 16? Let me read the
16	A. Do you want me to read off of this?	16 question.
17	Q. Tell me, first of all, what you testified to	17 It says, "What is your best memory of the
18	back in August.	18 number of Manhattans that you saw him drinking
19	A. I answered "Maybe four, maybe."	19 at the table?"
20	Q. My question to you today is, did you see him	20 What was your answer?
21	drinking beers at the table?	21 A. "Probably two. I know that he ordered like a
22	A. I know that he had a beer at the table.	22 round of them. I don't, you know, I don't
23	Q. Do you know if he had more than one beer at the	23 really remember how many. I think, you know,
24	table?	24 I'd probably say two."
	Page 34	Page 36
1	A. I don't know.	1 Q. Do you remember giving a statement to the
2	Q. Do you have any explanation for why back in	2 police after the investigation or after the
3	August of 2004 you testified that your best	3 accident?
4	memory was he had maybe four beers at the	4 A. Yes.
5	table?	5 Q. And you had not spoken to Mr. DiNatale before
6	A. I mean anything is possible. I know that he	6 you gave that statement; isn't that right?
7	had a beer, but I guess it's possible that he	7 A. Correct.
8	could have had more beers.	8 Q. And nobody had talked to you, other than the
9	Q. You testified that he had maybe four beers;	9 police, about what Jeff had to drink at the
10	isn't that right?	10 restaurant; is that right?
11	A. Correct. That would be why, the possibility of	11 A. Correct.
12	why I said that.	12 Q. Now, let me ask you this. Is there any
13	Q. Now, prior to your August 2004 testimony,	13 question in your mind about that when Jeff and
14	nobody had spoken to you about your upcoming	14 Mr. Espy and you first arrived at the
15	testimony; isn't that right?	15 restaurant, you went to the bar?
16	A. Right.	16 A. Okay.
17	Q. Prior to today's testimony, Mr. DiNatale had	17 Q. Is there any question in your mind about that?
18	spoken to you; isn't that right?	18 A. I know we went to the bar.
19	A. Yes.	19 Q. You didn't have anything to drink that night --
20	Q. Did you discuss the question of how many beers	20 alcoholic beverages -- did you?
21	to the best of your memory did you see him	21 A. No.
22	drink at the table, with Mr. DiNatale?	22 Q. And is there any question in your mind about
23	A. No.	23 that both Jeff and Mr. Espy when they went to
24	Q. Did you understand that Mr. DiNatale was	24 the bar, they ordered a beer upon arrival at

1 the bar?
 2 A. No.
 3 Q. That happened; is that right?
 4 A. Correct.
 5 Q. And they made that order at the same time; is
 6 that right?
 7 A. As best as I can remember. I can't
 8 specifically recall them both saying, you know,
 9 the time when they said, "Can I have a beer?"
 10 Q. But the three of you were in the bar area for
 11 some period of time before the others in your
 12 group arrived; isn't that right?
 13 A. Yes.
 14 Q. Fifteen or twenty minutes?
 15 A. Yes.
 16 Q. And during that fifteen or twenty minutes, it
 17 was just the three of you at the bar; isn't
 18 that right?
 19 A. Correct.
 20 Q. And they were drinking beer at the bar; isn't
 21 that right?
 22 A. Correct.
 23 Q. So when you were talking to Mr. DiNatale about
 24 your testimony at your August 2004 deposition

1 Q. Mr. DiNatale didn't tell you that the bar tab
 2 was on Exhibit 2, did he?
 3 A. No.
 4 Q. But he pointed to the two beers on Exhibit 2,
 5 didn't he?
 6 A. Yes.
 7 Q. What did he say about them?
 8 A. He said those were the two beers that were
 9 ordered.
 10 Q. Ordered at the bar?
 11 MR. GILLIS: Objection.
 12 A. He didn't say or he may have said. I don't
 13 remember. I remember him saying those are the
 14 two beers that they were drinking.
 15 Q. Mr. DiNatale was not at the Longhorn Steakhouse
 16 the night of September 26 to the best of your
 17 memory; isn't that right?
 18 A. Correct.
 19 Q. Did you see Jeff drinking beer while he was at
 20 the table?
 21 A. Yes.
 22 Q. And how many beers did you see Jeff drinking
 23 while he was at the table?
 24 A. I remember him having a mug in front of him.

1 and he showed you this Exhibit 2 to your
 2 deposition, did you have any discussion with
 3 him about the times that the beers were shown
 4 to have been ordered on Exhibit 2?
 5 A. No, other than him pointing out just the two
 6 beers were ordered. We didn't discuss anything
 7 further.
 8 Q. But you understood that the bar tab was on
 9 Exhibit 2; isn't that right?
 10 MR. GILLIS: Objection.
 11 A. Yes.
 12 Q. Mr. DiNatale told you that; isn't that right?
 13 MR. GILLIS: Objection.
 14 A. I don't know. I don't believe so.
 15 Q. What then was the basis for your understanding
 16 that the bar tab is on Exhibit 2?
 17 A. Me recalling that the bar -- whatever the bill
 18 at the bar was -- they just asked for it to be
 19 brought to the table.
 20 I don't specifically remember them paying
 21 the tab at the bar.
 22 Q. That's the sole basis for your statement that
 23 the bar tab is on Exhibit 2?
 24 A. Yes.

1 Q. The same size at the table that he had had at
 2 the bar?
 3 A. Yes.
 4 Q. The same beer perhaps at the table that he had
 5 had at the bar?
 6 A. Yes.
 7 Q. And the same kind of beer?
 8 A. Yes.
 9 Q. And how many drinks of Jack Daniels did Jeff
 10 have at the table?
 11 A. I remember seeing him have at least one. After
 12 seeing this, it's clear that it looks like he
 13 had two --
 14 MR. GILLIS: Objection.
 15 A. -- if the rounds were ordered.
 16 Q. Did Mr. DiNatale and you discuss how many Jack
 17 Daniels Manhattans are reflected on Exhibit 2?
 18 A. Yes.
 19 Q. How many are reflected on Exhibit 2?
 20 A. I can't remember. I need to count them.
 21 Q. Do you remember other people drinking Jack
 22 Daniels Manhattans as well?
 23 A. Yes.
 24 Q. And so my question to you is, what is your best

		Page 41	Page 43
1	memory of the number of Manhattans that you saw	1	I'd like you to do for me in your own words is
2	Jeff drinking at the table?	2	tell me as best as you can recall everything
3	MR. GILLIS: Objection, already asked and	3	Mr. DiNatale said to you and everything you
4	answered.	4	said to Mr. DiNatale during your
5	A. Two.	5	twenty-minutes-or-so meeting with him.
6	Q. What is your best memory of the number of beers	6	A. Well, when he first came, he introduced himself
7	you saw Jeff drinking at the table?	7	and I introduced myself to him, and he asked me
8	MR. GILLIS: Objection.	8	if I was in school, and I told him that I was
9	A. One.	9	currently going to Fitchburg State.
10	Q. And can we agree that your best memory of the	10	I think it was during my winter break. So
11	number of beers you remember him drinking at	11	I was not in class, and he made a little chat
12	the table in 2004 was four?	12	and asked me what sports or what I liked to do.
13	MR. GILLIS: Objection. That's not what	13	I said I liked to snowboard and ski, and
14	the answer says.	14	he mentioned that his -- I'm not sure who it
15	Q. Maybe four?	15	was -- some relative of his is going to be in
16	MR. GILLIS: Objection.	16	the Olympics, to watch out for him.
17	A. I testified to that.	17	Then he told me that he wanted to talk to
18	Q. Before you saw Mr. DiNatale?	18	me and just sort of tell me what I'm coming in
19	MR. GILLIS: Objection.	19	here to do, and he showed me Exhibit 2, and he
20	Q. Is that right?	20	asked me what I remembered Jeff having to drink
21	A. Yes.	21	that night, and, you know, if I remembered the
22	Q. Now, before you saw Mr. DiNatale, you also	22	bar tab being brought over to the table, and I
23	signed a statement for the police; isn't that	23	told him I did, and he went through Exhibit 2
24	right?	24	and he counted the beers and he counted the
		Page 42	Page 44
1	A. Yes.	1	Jack Daniels drinks, and he asked me if I
2	Q. Take a look at this and see if that is the	2	remembered them being ordered, and I said I
3	statement that you signed for the police.	3	remembered them being ordered in rounds.
4	A. It looks like it.	4	So then he just told me when I came in
5	Q. And how many drinks with Jack Daniels did you	5	here to don't make something up if you don't
6	tell the police Jeff had with dinner?	6	know it.
7	A. It says here maybe three drinks with Jack	7	He just wanted me to know that I'm coming
8	Daniels.	8	in here to tell what I know and if I don't
9	Q. Was that true?	9	know, then I'm not going to tell it.
10	A. Yes.	10	Q. Did he suggest to you that you had made
11	Q. Okay, and you also said, "We had dinner. Jeff	11	something up before?
12	had a couple of beers (maybe two)," in your	12	MR. GILLIS: Objection.
13	statement to the police; isn't that right?	13	A. No.
14	A. Yes.	14	Q. Because you had not made something up before,
15	Q. Was that true?	15	had you?
16	A. Yes.	16	A. I had not made something up. I mean, I just
17	MR. FARRAH: Can we have this marked as	17	believed that it could have been possible.
18	the next exhibit?	18	Q. By the way, did he say what sport his relative
19		19	was going to participate in, in the Olympics?
20	(Exhibit Number 3 was marked for	20	A. I believe it's snowboarding.
21	identification.)	21	Q. Did he say the name of the relative?
22		22	A. He did. I don't remember it.
23	(Off the record.)	23	Q. Okay. After that discussion, you testified a
24	Q. I want to talk about Mr. DiNatale again. What	24	little while ago that he told you what you were

	Page 45		Page 47
1	coming in here to do; do you recall that?	1	Q. Now, back to the question. Did Mr. DiNatale tell you why he was coming to see you?
2	A. Yes.	2	A. He told me that he was working as a private investigator for the case, and he was hired to -- Well, I don't know exactly what he was hired to do, but he was, you know, going to come and talk to me and just, you know, kind of show me, like, for example, Exhibit 2 and discuss it, and, you know, just once again kind of tell me the most important thing is to come in here and tell what I know and to not say something that I don't know for sure.
3	Q. What did he tell you you were coming in here to do?	3	Q. "Don't guess"? Is that what he said to you?
4	A. He was telling me that I was being deposed to come in here to tell what I knew about the night regarding Jeff Southworth and the Longhorn Steakhouse.	4	A. I don't know the words that he said, but yes.
5	Q. Did he tell you what he was coming to see you to do?	5	Q. But you were not guessing before, were you?
6	A. He told me that he was coming to see me to, you know, kind of tell me where I stand in all of this.	6	A. I don't think so.
7	Q. And did he tell you why he was coming to tell you to do that?	7	Q. Okay. When you testified before the grand jury, were you guessing?
8	A. Because he was hired.	8	A. No.
9	MR. GILLIS: If you know. Don't guess.	9	Q. When you gave the statement marked as Exhibit 3 in your deposition today to the police, were you guessing?
10	MR. FARRAH: This is not your witness.	10	A. No.
11	MR. GILLIS: If he's guessing, I don't want a guess. You can tell from his mannerisms that he is.	11	Q. When you testified on August of 2004, were you
12	MR. FARRAH: Whatever you think you can tell, you can tell, but let the witness		
13	testify. I don't think this is your witness		
	Page 46		Page 48
1	yet.	1	guessing?
2	MR. GILLIS: Do you have a problem with me telling him to tell the truth and not to guess if he doesn't know?	2	A. No.
3	MR. FARRAH: I have a problem with you interrupting him. When it's your turn, you can ask him whatever you want.	3	Q. Okay. One of the other things that
4		4	Mr. DiNatale told you was where you stood in all of this. At least that is what you
5		5	testified to a moment ago. What did he say
6		6	about that?
7		7	A. He just told me that I was the witness that was
8	MR. GILLIS: Why do you have a problem with him telling the truth?	8	with Jeff that night and I had not had anything
9	MR. FARRAH: I have no problem with him telling the truth.	9	to drink, and that, you know, whatever I would
10	MR. GILLIS: Why do you have a problem with him not guessing?	10	remember would probably be the most accurate
11	MR. FARRAH: I have a problem with you saying don't guess.	11	with respect to the people and members of the
12	MR. GILLIS: What's wrong with that?	12	group who had had drinks.
13	MR. FARRAH: Because he's in the middle of answering. That's the problem I have.	13	Q. Did he tell you anything else about where you
14	MR. GILLIS: If you think he's guessing, you should ask him that.	14	stood other than that?
15	MR. FARRAH: You're the one who thinks he's guessing. This is not your witness. As far as I know, you don't represent him.	15	A. I don't remember.
16	MR. GILLIS: I don't represent him.	16	Q. Okay. Did he say you were the only one who was sober at the table or words that effect?
17		17	MR. GILLIS: Objection.
18		18	A. He said I was the only one who was not
19		19	drinking.
20		20	Q. You knew that.
21		21	A. Yes.
22		22	Q. You didn't need Mr. DiNatale to tell you that,

	Page 49	
1	did you?	1 the one that is reflected at 9:15?
2	A. No.	2 A. No.
3	Q. Did Mr. DiNatale tell you anything else about	3 Q. He didn't tell you which one was the one that
4	where you stood in all of this?	4 Jeff ordered at the bar?
5	A. I don't remember him saying anything else.	5 A. He didn't.
6	Q. When he showed you Exhibit 2, what did he say	6 Q. But you understood that what Jeff ordered at
7	about it? Exhibit 2 is the tab.	7 the bar was either the one that is reflected at
8	A. Well, he first asked me what I remembered being	8 8:40 or the one that is reflected at 9:15; is
9	ordered and who was drinking and who was at the	9 that right?
10	table, and I told him that I thought that the	10 A. Yes.
11	tab was brought over from the bar, and he asked	11 Q. Did you tell him that, that you understood,
12	me what I remembered being ordered at the bar,	12 looking at Exhibit 2, that what Jeff had
13	and he counted up the number of Jack Daniels	13 ordered at the bar was reflected as either the
14	drinks that were ordered and the number of	14 8:40 beer or the 9:15 beer?
15	beers in Exhibit 2.	15 A. I never told him that. What I told him was
16	Q. And did he say anything about Exhibit 2, other	16 that I thought that the tab from the bar was
17	than counting up the number of Jack Daniels?	17 brought over and represented in this exhibit.
18	Did he say anything about it to you?	18 Q. Did he disagree with that?
19	A. He told me that what was ordered here, what was	19 A. No.
20	drinking here, and well, I don't remember him	20 Q. Did he agree with that?
21	specifically saying if the tab from the bar was	21 A. I think so. I honestly don't remember him
22	brought over, then that was all that was	22 saying "I agree."
23	ordered throughout the night, but that was what	23 MR. GILLIS: Objection.
24	I had taken from this.	24 Q. But you don't remember him saying, "I disagree
	Page 50	
1	Q. Did you say to him that you believed that what	1 with that," do you?
2	was ordered at the bar was reflected in	2 A. No.
3	Exhibit 2?	3 Q. What were you drinking that night?
4	A. I think so.	4 A. To be honest with you, I don't remember. I
5	Q. Well, let's see if we can do better than that.	5 remember being asked the question before, and I
6	Do you have a memory?	6 don't remember what I said.
7	A. I don't.	7 Q. Coke? Were you drinking Coke?
8	Q. When you were meeting with him, it was your	8 A. I know I was having soda.
9	belief that what was ordered at the bar was	9 Q. And typically, what kind of soda do you order?
10	reflected in Exhibit 2?	10 A. Mostly either Coke or maybe a Sprite.
11	A. Yes.	11 Q. Did Mr. DiNatale and you talk at all about what
12	Q. Did you share that belief with him?	12 you were drinking that night?
13	A. I'm pretty sure I did.	13 A. No.
14	Q. When you shared that belief with him, what did	14 Q. Did Mr. DiNatale and you discuss at all whether
15	he say about that?	15 what you were drinking that night is reflected
16	A. Well, he asked me who were the ones I	16 on Exhibit 2 to your deposition?
17	remembered having the beers, and I told him	17 A. I don't remember talking about that.
18	that I remembered Jeff having one and Scott	18 Q. Have you looked at Exhibit 2 to your deposition
19	having one, and then he told me that, "Well, if	19 to see whether or not what you were drinking
20	those are the two beers, then Jeff had a beer."	20 that night is reflected on it?
21	Q. Referring to Exhibit 2?	21 A. No.
22	A. Correct.	22 Q. What were you eating that night?
23	Q. And did he tell you whether Jeff's beer at the	23 A. I think I had some ribs. I'm not 100 percent
24	bar was the one that is reflected at 8:40 or	24 sure.

1 Q. Now, at the bar did Jeff order any Jack Daniels
 2 Manhattans?
 3 A. No.
 4 Q. Are you sure?
 5 A. Yes, at the time.
 6 Q. At the time that Jeff was delivered his last
 7 drink, was he exhibiting any signs of
 8 intoxication to you?
 9 A. No.
 10 Q. Was he loud?
 11 A. He didn't stand out to be. I mean, I don't
 12 know exactly what you mean by "loud."
 13 Q. Was the table loud?
 14 A. Yes. Do you mean with respect to everything
 15 else?
 16 Q. Was the table loud?
 17 A. Not extremely.
 18 Q. Okay. Did Mr. DiNatale talk to you at all
 19 about whether or not Jeff was exhibiting any
 20 signs of intoxication that evening?
 21 A. I believe he did.
 22 Q. Can you tell us what you remember about that?
 23 A. I'm pretty sure he asked me if I remembered him
 24 acting like he was drunk.

1 Longhorn, did Jeff appear to you to be under
 2 the influence of what he had been drinking at
 3 the Longhorn," and your answer was, "I mean,
 4 yeah, a little bit." Do you see that?
 5 A. I do.
 6 Q. Did he appear to be under the influence of what
 7 he was drinking at the Longhorn?
 8 MR. GILLIS: Objection.
 9 A. I don't remember him -- I don't know how to say
 10 this, you know, exhibiting clear signs of
 11 intoxication.
 12 I mean, I guess obviously anyone who is
 13 drinking anything will be under the influence
 14 of what they're drinking, but I don't remember
 15 him clearly showing signs of intoxication.
 16 Q. Okay. So is it your testimony today that he
 17 appeared to be under the influence of what he
 18 was drinking at the Longhorn because anybody
 19 who is drinking is under the influence of what
 20 he is drinking?
 21 A. Yes.
 22 Q. And he did appear to you to be under the
 23 influence of what he was drinking; is that
 24 right?

1 Q. "Drunk"? Is that what he said?
 2 A. I don't know what he said.
 3 Q. What do you remember he said?
 4 MR. GILLIS: Objection.
 5 A. I remember him asking, I guess, if he was
 6 exhibiting signs of alcohol.
 7 MR. GILLIS: Objection, and I'm going to
 8 say it again, we cannot have answers here that
 9 are guesses. He said "I guess it was."
 10 We have to have your memory, not a guess.
 11 A. I honestly don't know what questions he asked
 12 me.
 13 Q. What did you say?
 14 A. I told him that I didn't see any signs of being
 15 drunk or intoxicated.
 16 Q. While you were at the Longhorn, did Jeff appear
 17 to you to be under the influence of what he had
 18 been drinking at the Longhorn?
 19 MR. GILLIS: Objection.
 20 A. No.
 21 Q. Can you turn to page 49 of your earlier
 22 deposition? Will you go down to Line 12, and
 23 do you recall being asked in August of 2004 the
 24 question, "Okay, while you were at the

1 MR. GILLIS: Objection.
 2 A. Yes.
 3 Q. Did Jeff appear to hold himself that night at
 4 the Longhorn in the same way he usually did?
 5 A. Without reading this, I honestly don't
 6 remember.
 7 Q. Let me withdraw that question. I guess you've
 8 answered it.
 9 At some point in time, did somebody come
 10 over from the restaurant and ask the table to
 11 quiet down?
 12 A. Yes.
 13 Q. And that was how long before you left?
 14 A. I honestly don't remember.
 15 Q. Could you look at pages 43 and 44, please?
 16 Actually, you have to start at 42.
 17 A. All right.
 18 Q. I started to ask you a question at the bottom
 19 of 42.
 20 "Did anybody while you were at the table
 21 that night say," and then you interrupted. You
 22 said "I," and then I said, "I'm sorry?"
 23 Then you said, "I kind of remember now. I
 24 don't know who it was, whether it was, you

1 know, a manager or someone. It might have even
 2 been our waitress. I remember someone coming
 3 over and asking our table to be quiet, a little
 4 bit quieter."

5 Do you remember that happening?

6 A. Yes.

7 Q. Do you remember that testimony?

8 A. Yes.

9 Q. And then I'm going to ask you now on the
 10 record, was that because the table was loud?

11 A. Yes.

12 Q. And who was making a lot of noise that night at
 13 the table?

14 MR. GILLIS: Are you asking the question?

15 Q. I'm asking the question. Who was making a lot
 16 of noise that night at the table?

17 A. We all were.

18 Q. Jeff included?

19 A. Yes.

20 Q. And then I asked you on page 44, Line 14, "Give
 21 me your best estimate of how much time elapsed
 22 from when the woman came over and told you to
 23 tone it down and when you left the restaurant,"
 24 and your answer was, "Maybe twenty-five minutes

1 A. Yes, I do.

2 Q. What was your answer?

3 A. "Yeah, I mean, yes."

4 Q. Do you have any explanation as to why you
 5 testified differently today than how you
 6 testified in your deposition in August?

7 A. Well, everyone was loud at the table. So
 8 that's why I said that.

9 Q. That's your explanation as to why you testified
 10 differently today than how you testified in
 11 August?

12 A. Well, I guess if -- I won't guess. If he was
 13 being loud at the table, then it would be
 14 louder with respect to everyone else in the
 15 restaurant, you know, and I mean, he's not a
 16 loud kid, but he was not a quiet kid.

17 So yes, he was being a little bit louder
 18 than he usually is, you know, as a one on one
 19 or, you know, just to talk with him.

20 Q. So which is it today, Mr. Connelly? Was he
 21 louder that night than he usually is or wasn't
 22 he?

23 A. He was.

24 Q. Do you have any explanation for why a moment

1 to half an hour."

2 Does that refresh your memory as to how
 3 long after you were told to quiet down it was
 4 that the group left the restaurant?

5 A. Yes.

6 Q. Now, by the way, am I correct that the person
 7 that served your group at the table was not the
 8 person that served you at the bar?

9 A. Yes.

10 Q. Both blonde?

11 A. Yes.

12 Q. Can you turn back to page 49 for me?

13 A. All right.

14 Q. Now, my question to you is, was Jeff sloppier
 15 looking that night than he usually is? I'm
 16 asking you the question now on the record.

17 A. Yes.

18 Q. Was he louder that night than he usually
 19 appeared to you?

20 A. No.

21 Q. Do you recall being asked on page 50, the
 22 question was, "Was he louder than he usually
 23 appeared to you?"

24 Do you see that?

1 ago you said he wasn't?

2 A. Well --

3 MR. GILLIS: Objection.

4 A. You know, when you talk to him, he would be
 5 pronounced. So he was somewhat of a -- As I
 6 said, he was not quiet.

7 So that would be why I said it, but
 8 everyone was loud with respect to everyone else
 9 in the restaurant. So he was a little bit
 10 louder.

11 Q. Was that because, in your opinion, of what he
 12 had to drink?

13 MR. GILLIS: Objection.

14 A. No.

15 Q. Was Mr. Southworth exhibiting signs of
 16 intoxication at the time that the waitress came
 17 over to the table and asked you to quiet down?

18 A. No.

19 Q. Do you remember making an affidavit?

20 A. I do.

21 Q. Do you remember talking to Mr. DiNatale about
 22 your affidavit?

23 A. What is the affidavit?

24 Q. Do you remember talking with Mr. DiNatale about

	Page 61	Page 63
1	your affidavit?	1 "I also testified on pages 42 to 44 of my
2	A. Which is the affidavit? I remember doing an	2 deposition that approximately one half hour
3	affidavit, but I don't remember it. I know we	3 before we left the Longhorn Steakhouse,
4	had a couple of things with him.	4 everyone at the table was loud, including
5	Q. Is that your signature?	5 Mr. Southworth, and either a waitress or a
6	A. It is. I've done this a few times, and I just	6 manager at the restaurant came and asked us to
7	don't know which one is which.	7 be quiet."
8	Q. Take a look at this document.	8 Do you see that?
9	(Witness reviews document.)	9 A. I do.
10	(Short recess.)	10 Q. Did I read that correctly?
11	MR. FARRAH: Could we have his affidavit	11 A. Yes.
12	marked as the next exhibit, please?	12 Q. Was that true that approximately one half hour
13		13 before you left, everyone at the table was
14	(Exhibit Number 4 was marked for	14 loud, including Mr. Southworth, and either a
15	identification.)	15 waitress or a manager came to you and asked you
16		16 to be quiet?
17	Q. Mr. Connelly, I'm going to show you what has	17 A. Yes.
18	been marked as Exhibit 4 in this deposition.	18 Q. Paragraph 7 reads, "At that time when the table
19	Do you see it?	19 was asked to quiet down, Mr. Southworth was
20	A. Yes.	20 exhibiting all the signs of intoxication I
21	Q. It's your affidavit; is that right?	21 testified about on pages 49 through 51 of my
22	A. Correct.	22 deposition."
23	Q. That's your signature?	23 Do you see that?
24	A. It is.	24 A. Yes.
	Page 62	Page 64
1	Q. On page 2?	1 Q. Did I read that right?
2	A. Yes.	2 A. You did.
3	Q. Would you turn to Paragraph 5? Paragraph 5	3 Q. And is that true that at the time when the
4	reads, "In my deposition of pages 49 to 51, I	4 table was asked to quiet down, Mr. Southworth
5	testified that during the course of the evening	5 was exhibiting all the signs of intoxication
6	at the Longhorn Steakhouse, Mr. Southworth	6 that you testified to on pages 49 through 51 of
7	seemed to be under the influence of the	7 your deposition?
8	alcoholic beverages he was being served at the	8 MR. GILLIS: Objection.
9	restaurant."	9 A. Yes.
10	Do you see that?	10 Q. Let's look at pages 49 to 51 of your
11	A. Yes.	11 deposition.
12	Q. Did I read that correctly?	12 My question I asked some time ago was,
13	A. You did.	13 "Was Jeff holding himself at the time the table
14	Q. And you understood you made this affidavit	14 was asked to quiet down the same way he usually
15	under the pains and penalties of perjury in May	15 held himself?"
16	of 2005?	16 A. I honestly don't remember. So I'm going to use
17	A. Yes.	17 this because this is what is going to be
18	Q. My question is, during the course of the	18 correct.
19	evening at the Longhorn Steakhouse, did	19 Q. Do you recall testifying in August of 2004 in
20	Mr. Southworth seem to be under the influence	20 response to the question, "What did he show?
21	of the alcoholic beverages he was being served?	21 What did he manifest that makes you say that,"
22	MR. GILLIS: Objection.	22 and that was that he appeared to be a little
23	A. Yes.	23 bit under the influence of what he was
24	Q. And then Paragraph 6 of your affidavit reads,	24 drinking?

	Page 65	Page 67	
1	Do you remember answering in part, "That	1	MR. GILLIS: Objection.
2	night he was, you know, sort of just seemed to	2	A. No.
3	me that he was a little bit under the influence	3	Q. Let's go back to what I was asking you before.
4	just because by the way he didn't really hold	4	That night at the Longhorn, was Jeff sloppier
5	himself. At least it looked like he didn't	5	looking than he usually is?
6	hold himself the same way as he usually did."	6	A. Yes.
7	Do you recall that testimony?	7	Q. Was he louder than he usually appeared to you?
8	A. Yes.	8	A. Yes.
9	Q. Is that accurate that that night he didn't hold	9	Q. Were his eyes glassy?
10	himself the same way he usually did?	10	A. Can I use this answer because I honestly don't
11	MR. GILLIS: Objection.	11	remember?
12	A. Yes. Let me just say what I just answered is	12	MR. GILLIS: That's your answer. He can't
13	yes, but also, I mean, I think that this had	13	use that as his answer. It has to be his
14	something to do with it, but what I said is	14	memory.
15	what I said and it is yes, but, you know, we	15	Q. Do you have a memory?
16	were dirt biking, and it's not, you know, when	16	A. I don't.
17	I usually see him, we're dirt biking, and I	17	Q. Do you have a memory of whether or not Jeff's
18	have never really spent that much time with him	18	eyes were glassy at all that night?
19	not dirt biking.	19	A. I don't.
20	So, you know, what I remember him holding	20	Q. Can you read to yourself page 50, Line 23
21	himself is from dirt biking.	21	through page 51, Line 4?
22	Q. You've seen him in fights; isn't that right?	22	(Witness reviews document.)
23	MR. GILLIS: Objection.	23	Q. Have you done that?
24	A. I have.	24	A. Yes.
	Page 66	Page 68	
1	Q. You've seen him at parties; isn't that right?	1	Q. Does that refresh your memory about whether or
2	A. I remember seeing him at a party.	2	not Jeff's eyes were glassy that night at the
3	Q. You've seen him in at least one fist fight;	3	restaurant at the time you were asked to quiet
4	isn't that right?	4	down?
5	A. I do. At that point, I was not really familiar	5	A. A little bit.
6	with him, but yes, that's correct.	6	Q. What is your memory now of whether or not
7	Q. You testified about seeing him in a fist fight.	7	Jeff's eyes were glassy at the time your table
8	You remember that, don't you?	8	was asked to quiet down?
9	A. If I did, I did. I don't remember, but I guess	9	MR. GILLIS: Objection.
10	I did.	10	A. They could have been.
11	Q. Did you talk to the private investigator,	11	Q. They very well could have been?
12	DiNatale, about your testimony at the	12	MR. GILLIS: Objection.
13	deposition?	13	A. They could have been, but I don't specifically
14	A. This?	14	remember. I don't remember looking at him and,
15	Q. Did you talk to Mr. DiNatale when he came to	15	you know, looking into his eyes and wondering
16	your house about the testimony that you've	16	if they were glassy. As I say, they could have
17	given at your earlier deposition?	17	been.
18	A. I think he asked -- I don't think we -- No, we	18	Q. They very well could have been?
19	didn't discuss, you know, what was asked and	19	MR. GILLIS: Objection, asked and
20	what was answered in the deposition.	20	answered.
21	Q. Did Mr. DiNatale, for example, say to you	21	A. Yes.
22	something like, "You testified at your	22	Q. Do you have any explanation as to why you
23	deposition that Jeff had four beers maybe at	23	testified in August of 2004 that his eyes very
24	the table"?	24	well could have been glassy?

	Page 69	Page 71
1	MR. GILLIS: Objection. Are you talking	1 that right?
2	about the top of 51? What line are you looking	2 A. Yes.
3	at?	3 Q. At that time, you said two; is that right?
4	MR. FARRAH: You figure it out.	4 A. Yes.
5	MR. GILLIS: What line are you referring	5 Q. And when you gave the statement to the police
6	to?	6 on November 2, 2003 which has been marked as
7	MR. FARRAH: I'm asking him a question.	7 Exhibit 3 in your deposition, you had not seen
8	MR. GILLIS: No, you're not. You're	8 what has been now marked as Exhibit 2, the tab?
9	asking him to read something in the book. Are	9 A. No.
10	you asking him to read it?	10 Q. And at that time, you wrote that he had had
11	MR. FARRAH: I'm asking him if he has an	11 maybe three drinks with Jack Daniels with
12	explanation for why he testified that his eyes	12 dinner; is that right?
13	very well could have been glassy.	13 A. Yes.
14	MR. GILLIS: If you put the book in front	14 Q. What was the basis for making that statement
15	of him, I want a page reference so we can put	15 back in November of 2003?
16	it on the record.	16 A. Well, the first one would be the round that I
17	MR. FARRAH: He's already testified.	17 specifically remember being ordered.
18	A. It's possible that his eyes could have been	18 The second one would be when more were
19	glassy. That's why.	19 ordered and the possibility that he drank
20	Q. Do you have a memory of it?	20 another one.
21	A. Of seeing his eyes glassy?	21 Q. Your memory of the events of September 26 was
22	Q. Yes.	22 better in November of 2003 than it is today?
23	A. No.	23 A. Yes.
24	Q. Do you have any explanation for why you	24 Q. A lot better?
	Page 70	Page 72
1	testified, "They very well could have been	1 A. I'd say so.
2	glassy"?	2 MR. GILLIS: Objection.
3	MR. GILLIS: Objection.	3 Q. Do you remember anybody else drinking beers at
4	A. Other than it's possible, I don't.	4 the table, besides Jeff?
5	Q. What is your best memory as you sit here today	5 A. I remember Scott having beer.
6	as to how many Jack Daniels Manhattans that	6 Q. At the table?
7	Jeff had at the table?	7 A. Yes.
8	MR. GILLIS: Objection.	8 Q. Ordered from the waitress?
9	A. Two.	9 A. I don't remember if it was ordered from the
10	Q. And the basis for that is what?	10 waitress or ordered from the bartender.
11	A. I specifically remember a round being ordered,	11 Q. Do you have a memory of Jeff carrying a beer
12	and then I see that some more were ordered, and	12 from the bar over to the table?
13	I don't know whether they were ordered in a	13 A. Yes.
14	round or, you know, a few here and a few there,	14 Q. And do you have a memory of Scott carrying a
15	but it looks like apparently he had another	15 beer over from the bar to the table?
16	one.	16 A. Well, I remember seeing Jeff bringing his beer
17	Q. That testimony is based on the fact that you	17 over, and I remember them saying something
18	have now seen Exhibit 2 to your deposition; is	18 about having the tab brought over to the table.
19	that right?	19 I don't remember seeing Scott carry the
20	MR. GILLIS: Objection.	20 beer over to the table as I did Jeff.
21	A. Yes.	21 Q. Then do you remember Jeff ordering beers while
22	Q. Before you saw Exhibit 2 to your deposition,	22 he was at the table?
23	you had testified about how many Jack Daniels	23 A. I don't.
24	Manhattans he had had in August of 2004; isn't	24 Q. Do you remember Jeff ordering chowder while he

1 was at the table?
 2 A. I don't.
 3 Q. How about fingers, whatever they are? Do you
 4 remember ordering those at the table?
 5 A. I don't remember any of the specific things or
 6 who or when they were ordered specifically,
 7 besides the round of Manhattans.
 8 Q. You remember one round of Manhattans being
 9 ordered?
 10 A. Yes.
 11 Q. You've looked at the check, and do you see that
 12 more than one round of Manhattans is reflected
 13 on that check; is that right?
 14 A. Yes.
 15 Q. Did you discuss that at all with Mr. DiNatale?
 16 A. Yes.
 17 Q. What did he say and what did you say about
 18 that?
 19 A. Well, he asked me what I remember being ordered
 20 in reference to the Manhattans, and I told him
 21 I remembered the first round of drinks being
 22 ordered and that I remembered more being
 23 ordered, but I don't know whether they were in
 24 a round or individuals ordered them or, you

1 to him as Fat Matt. They didn't call him Fat
 2 Matt.
 3 Q. So he asked you how many people were there at
 4 the table.
 5 So does that mean including yourself,
 6 there were seven people at the table?
 7 A. That I remember.
 8 Q. You don't remember any other people, do you?
 9 A. No.
 10 Q. You had two tables pulled together for your
 11 party; is that right?
 12 A. Yes, I believe it was at least two tables.
 13 Q. And you were sitting across from Jeff; is that
 14 right?
 15 A. Yes.
 16 Q. And you had nothing obstructing your view of
 17 Jeff; is that right?
 18 A. Correct.
 19 Q. What I want to know is, where is the first
 20 round of Manhattans that is on Exhibit 2?
 21 Which is the first round of Manhattans that
 22 you're referring to?
 23 A. It has to be this one.
 24 Q. Okay, and you're pointing to the 8:51 round; is

1 know, this side of the table said we'll take
 2 another round or how it exactly came about.
 3 Q. What did he say?
 4 A. Well, he pointed out that the first one looked
 5 like it was a round ordered, and he said that
 6 there were more ordered and that it looked
 7 like, you know, if going with the round that
 8 was first ordered that each person would have
 9 had another one.
 10 Q. So did he say anything else about the Jack
 11 Daniels that were ordered?
 12 A. I remember him asking me how many people I
 13 specifically remembered being there with
 14 reference to how many drinks were ordered.
 15 Q. What did you tell him?
 16 A. I told him that I remembered besides myself, I
 17 remembered Scott Espy, Jeff Southworth, Michael
 18 Espy, Todd Perry, and then two other people
 19 whom I didn't know.
 20 I believe I referred to them as one was a
 21 snowmobiler and one I remember them calling him
 22 Fat Matt.
 23 Q. Who called him Fat Matt?
 24 A. Everyone. I didn't call him -- They referred

1 that right?
 2 A. Yes. I see there are some ordered before that.
 3 I mean, I must be wrong in saying the first
 4 time it was ordered it was not a full round.
 5 That's what I remembered.
 6 Q. I want to know what you remember talking to
 7 Mr. DiNatale about as it relates to the
 8 Manhattans, the rounds of Manhattans that were
 9 ordered.
 10 A. I remember telling him that a round was
 11 ordered, and then there were more ordered, and
 12 they went around to the different people that
 13 were at the table, and he, once again, asked me
 14 who I remembered at the table, and then he, you
 15 know, kind of did like some calculation and
 16 added up all the Jack Daniels that were
 17 ordered, which I cannot remember how many there
 18 were, and he asked me what -- No, I don't
 19 remember what he asked me.
 20 He just made reference to, you know, there
 21 were seven people that I remembered being
 22 there, and then there were this many Jack
 23 Daniels ordered.
 24 Q. After he had calculated the number of people at

1 the table and the number of Jack Daniels that
 2 were ordered, did he do anything with those
 3 calculations?
 4 A. Well, he asked me if I remembered them being
 5 rounds and I said yes.
 6 Q. What did you say?
 7 A. He asked me how I remembered them being ordered
 8 and I told him, you know, rounds, and then he
 9 told me, "All right. So there's this many
 10 people at the table and a round is ordered and
 11 then another round is ordered," and then I
 12 believe there were I'm not sure how many.
 13 I don't remember the number, but I don't
 14 believe that accounted for all of them.
 15 Q. So did he interpret that for you at all?
 16 MR. GILLIS: Objection.
 17 A. No, not that I remember.
 18 Q. I'm going to represent to you that there were
 19 seventeen Jack Daniels drinks ordered.
 20 Does that sound like the number that
 21 Mr. DiNatale shared with you?
 22 A. Yes.
 23 Q. There were six people, according to your
 24 testimony, who were of drinking age --

1 exactly what he said.
 2 He said that there were -- I believe he
 3 asked me who had them, and I told him that I
 4 didn't remember.
 5 Q. But you know you didn't have any; is that
 6 right?
 7 A. Yes.
 8 Q. Okay, and Scott, Jeff and you were seated
 9 before the others arrived; is that right?
 10 A. No.
 11 Q. Just before the others arrived?
 12 A. We were seated -- Well, I honestly don't
 13 remember at this point. I remember them coming
 14 in the door.
 15 I don't remember whether we sat down right
 16 before them or if we all sat down right
 17 together.
 18 Q. And do you remember the first order of Jack
 19 Daniels, that is, how many were ordered?
 20 A. I remember a round being ordered.
 21 Q. Who ordered it?
 22 A. I think Jeff did.
 23 Q. You'd seen Jeff drink Jack Daniels Manhattans
 24 before?

1 A. Okay.
 2 Q. -- at table that night. Does that sound like
 3 what you and Mr. DiNatale talked about?
 4 A. Yes.
 5 Q. Did he talk at all about the relationship
 6 between seventeen Jack Daniels Manhattans and
 7 six people of drinking age at the table?
 8 A. Well, I believe that he told me that if what I
 9 remember was being ordered as rounds, then
 10 there were unaccounted-for drinks.
 11 Q. Unaccounted-for drinks?
 12 A. Yes.
 13 Q. What did he mean by that?
 14 MR. GILLIS: Objection.
 15 A. Drinks that I said I remembered a round being
 16 ordered and then more rounds and I guess
 17 another round was ordered, and I didn't
 18 specifically say another round being ordered,
 19 but there were more drinks ordered to the
 20
 21
 22
 23
 24

ated that out to you?
 lid he say about that?
 i remember. I mean, I don't remember

1 MR. GILLIS: Objection.
 2 A. No.
 3 Q. How are the Jack Daniels Manhattans served --
 4 on the rocks or straight up?
 5 A. I don't know.
 6 Q. Do you know the difference?
 7 A. Yes; one has ice and one doesn't.
 8 Q. So it's your best memory that Jeff ordered the
 9 first round of Jack Daniels Manhattans?
 10 A. Yes.
 11 Q. At the time he ordered those Jack Daniels
 12 Manhattans, did he also order a beer?
 13 MR. GILLIS: Objection.
 14 A. I can't say for sure.
 15 Q. Can you describe the waitress?
 16 A. I remember her being a woman, and I remember
 17 her having blonde hair.
 18 Q. Tall? Short?
 19 A. I don't know.
 20 Q. Older or younger than the barmaid?
 21 A. Well, I don't really remember the bartender
 22 that well. So I don't really know how to base
 23 an answer on that.
 24 I remember her being like maybe in her

1 mid-twenties.
 2 Q. Who are we talking about?
 3 A. The waitress.
 4 Q. Do you remember the age of the barmaid?
 5 A. No.
 6 Q. Do you have any memory of the age of the
 7 barmaid?
 8 MR. GILLIS: Objection.
 9 A. No.
 10 Q. Is your memory exhausted as to the age of the
 11 barmaid?
 12 A. Yes.
 13 Q. Can you turn to page 35, please, the bottom.
 14 Just read 18 to 24 to yourself.
 15 (Witness reviews document.)
 16 A. Okay.
 17 Q. Does reading that refresh your memory as to how
 18 old the barmaid was?
 19 A. Not specifically.
 20 Q. Do you have any reason to doubt that your
 21 testimony back in August about her age was
 22 accurate?
 23 MR. GILLIS: Objection.
 24 Q. August of 2004.

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1 Q. What was the basis for your memory that a
 2 second round of Jack Daniels was ordered?
 3 A. Well, I remember more Jack Daniels at the
 4 table, and this exhibit shows that there were
 5 more.
 6 Q. Exhibit 2?
 7 A. Yes.
 8 Q. Do you have a memory that a third round of Jack
 9 Daniels Manhattans was ordered?
 10 A. No.
 11 Q. Do you have a memory that there was a third
 12 instance where Jack Daniels Manhattans were
 13 ordered?
 14 MR. GILLIS: Objection.
 15 A. I do not remember. It is apparent that there
 16 was. I just don't specifically remember.
 17 Q. Do you remember talking to Mr. DiNatale about
 18 that?
 19 A. A third?
 20 Q. Yes, a third round of Jack Daniels Manhattans
 21 being ordered.
 22 A. I don't remember him saying anything about a
 23 third round. I remember him talking about --
 24 as I referred to before -- the unaccounted-for

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1 MR. GILLIS: Objection.
 2 A. I'm sure whatever I said here is what I
 3 remembered. I don't remember it now.
 4 Q. When you say "here," you mean in your
 5 deposition of August of 2004?
 6 A. Correct.
 7 Q. And do you remember anyone at the table after
 8 Jeff ordered the first round of Jack Daniels
 9 Manhattans, do you remember anyone at the table
 10 saying anything about the delay in receiving
 11 the drinks?
 12 A. No.
 13 Q. And how long after you had sat at the table was
 14 it that the first round was ordered by Jeff?
 15 A. I don't know.
 16 Q. And do you have a memory as you sit here today
 17 that a second round of Jack Daniels Manhattans
 18 was ordered?
 19 A. Yes.
 20 Q. By Jeff?
 21 A. I can't say that for sure.
 22 Q. Who do you remember ordered the second round?
 23 MR. GILLIS: Objection.
 24 A. I don't recall who specifically ordered it.

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1 drinks.
 2 Q. When the check came to the table, did it come
 3 to Jeff?
 4 A. I don't know. It was put on the table.
 5 Q. Jeff paid for you that night; is that right?
 6 A. Correct.
 7 Q. When the person came over and told the table to
 8 quiet down, what is your best memory of who
 9 that person was, what that person looked like?
 10 MR. GILLIS: Objection.
 11 A. I don't really remember. I just remember
 12 someone came over and asked the table to, you
 13 know, be a little bit quieter.
 14 Q. A man? A woman?
 15 A. I don't remember specifically. I'm not
 16 supposed to guess.
 17 Q. Is that because Mr. Gillis tells you not to
 18 guess?
 19 A. No. I don't think that I should guess.
 20 Q. Mr. DiNatale told you not to guess, right?
 21 A. He did tell me not to guess, but if I don't
 22 know the truth, not to come up with one.
 23 Q. What do you remember whoever the person was
 24 that came over to the table saying about

		Page 85	Page 87
1	quieting down?	1	know exactly how it happened, but I remember,
2	MR. GILLIS: Objection.	2	you know, whoever ordered the first round,
3	A. I just remember them asking us to tone it down	3	which I believe was Jeff, ordered a round, and
4	a little bit.	4	the waitress came over and put them down, and
5	Q. Do you remember to whom at the table that	5	you know, then they were drinking.
6	person spoke or with whom at the table that	6	I guess if she ordered seven, then she
7	person spoke?	7	counted the number of people that were at the
8	A. As far as I remember, it was speaking to the	8	table and brought over seven. That would be my
9	whole table.	9	accounting for those.
10	Q. You could hear that person?	10	Q. You remember Jeff saying words to the effect
11	A. Yes.	11	"Bring us a round of Jack Daniels Manhattans"?
12	Q. How far away were you from the other end the	12	A. Yes.
13	table, the furthest end away from you?	13	Q. And do you remember Jeff at that time ordering
14	A. Well, the way I remember it --	14	for you something to drink?
15	Q. Let's look at Exhibit 1, if that helps you.	15	A. I think I already had a drink at that point.
16	A. Could I use the pen for a minute?	16	Q. From the bar?
17	Q. If you're going to write on something, why	17	A. Yes, I guess. Well, I can't say that, sorry.
18	don't you --	18	Q. So my question is, do you remember Jeff
19	A. I can explain it, but it would be a lot easier.	19	ordering a drink for you?
20	Q. Here's a blank one for you.	20	MR. GILLIS: Objection.
21	A. This section right here is where we sat. There	21	Q. By "a drink," I don't mean an alcoholic
22	weren't four tables there.	22	beverage. I mean something to drink.
23	What I remember is, if you just imagine,	23	A. No. I'm pretty sure she asked me what I wanted
24	this is the table that everyone sat at, whether	24	and I ordered it.
		Page 86	Page 88
1	it be one, two or three or how many tables.	1	Q. The waitress?
2	I remember Scott sitting on the end and	2	A. Yes.
3	Jeff sitting here and I was sitting here. I	3	Q. Now, when the first round came, was there some
4	don't specifically remember what the order of	4	discussion about that there was an extra drink
5	the other people was.	5	there?
6	So I believe that there would be two more	6	A. I don't remember any discussion. I suppose
7	people, and then at the end of the table	7	since there was an extra drink that -- I don't
8	someone else would be right there on the other	8	remember anything.
9	end. So I would be two seats away.	9	Q. Do you know who drank the extra drink?
10	Q. Do you remember anyone seated to your right?	10	MR. GILLIS: Objection.
11	A. Besides Scott, no.	11	A. No.
12	Q. Well, am I wrong that this is you right here?	12	Q. Did Mr. DiNatale tell you that Table 52
13	A. No. That's Jeff. I'm facing this way.	13	reflected the table that you were at that
14	Q. Do you remember anyone seated to your left?	14	night?
15	A. Yes.	15	A. Yes.
16	Q. Who?	16	Q. He told you that; is that right?
17	A. I don't know who.	17	A. Yes. He also said this, which I don't think I
18	Q. You were not drinking any alcoholic beverages	18	mentioned before.
19	that night, were you?	19	He asked me when he was speaking to me
20	A. No.	20	about the unaccounted-for drinks. He asked me
21	Q. Do you have any explanation for who drank the	21	if I remembered an eighth person, which I told
22	seven Jack Daniels Manhattans that were	22	him I didn't remember an eighth person. Those
23	ordered, according to Exhibit 2, at 8:51 p.m.?	23	were the people that I remembered.
24	A. Well, that was the round. I honestly don't	24	Q. Did he tell you that there was an eighth person

	Page 89	Page 91
1	at the table?	1 A. Yes.
2	A. He didn't tell me that there was an eighth	2 Q. Did you discuss that with him?
3	person at the table.	3 A. Other than him counting it up and asking me how
4	Q. Did he suggest that there was an eighth person	4 many beers I thought were drinking throughout
5	at the table?	5 the evening, no.
6	MR. GILLIS: Objection.	6 Q. Did Mr. DiNatale discuss with you at all how a
7	A. Well, what he did is he did the same thing as	7 check is generated at the Longhorn Steakhouse?
8	he did with the seven people at the table with	8 A. Yes. He said that they have to enter it -- the
9	eight people at the table, leaving less	9 waitress, that is. Each waitress, dealing with
10	unaccounted-for drinks.	10 each table, has to log it into a computer.
11	Q. Try to tell me what you remember him saying	11 Q. So he explained that to you; is that right?
12	about doing the same thing with eight people at	12 A. Yes.
13	the table as he had done with seven people at	13 Q. What else did he tell you about how the check
14	the table.	14 is generated?
15	A. If there were seventeen drinks and there were	15 A. That's all I remember him telling me. He said
16	six other people and me, if there were seven	16 the last one out reflects everything, but I
17	people that would be one round would be six,	17 don't remember anything else.
18	second round would be twelve, leaving five	18 Q. And do you have a memory that Jeff ordered at
19	unaccounted-for drinks.	19 the bar chowder?
20	Q. That's what he called them?	20 A. No.
21	A. I don't know what he called them. That's what	21 Q. Fingers?
22	I'm calling them.	22 A. No.
23	Q. What did he call them?	23 Q. Any food at the bar at all?
24	A. I don't remember.	24 A. No.
	Page 90	Page 92
1	Q. What did he say about the five what you've	1 Q. At any time that night while you were at the
2	called unaccounted-for drinks?	2 restaurant, did anyone get up and leave the
3	A. I don't know. I just remember him asking me if	3 table?
4	there was a possibility that there was another	4 A. Yes; specifically, Jeff.
5	person, and then him doing the same	5 Q. When did he get up and leave the table?
6	calculation.	6 A. It was some point after we had been served our
7	So there would be seven other people than	7 dinner.
8	me, so the first round seven, second round	8 Q. And where did he go?
9	fourteen, leaving three unaccounted-for drinks,	9 A. He went to the bathroom.
10	as what I'm calling them.	10 Q. And how do you know that?
11	Q. But he went through that calculation with you?	11 A. Well, our location where our table was was
12	A. I don't know if he went through that	12 relatively close to the bathroom, and I saw him
13	calculation. He said there would be less other	13 walk over and use the bathroom.
14	drinks -- less drinks that I'm calling	14 Q. And did you see him come back to the table?
15	unaccounted-for.	15 A. Yes.
16	Q. Did you discuss with Mr. DiNatale the 8:40	16 Q. Did anybody else get up at any point in time
17	order?	17 and leave the table that you recall?
18	A. I believe so.	18 A. Not specifically. I'm sure if someone had to
19	Q. What did he say about the 8:40 order?	19 go and get up and use the restroom they did,
20	A. He may have said something else, but what I	20 but I remember Jeff doing that and not anyone
	remember is he was just counting them up,	21 else.
	ting all the other ones.	22 Q. What did you have to eat that night?
	3:40 order reflects a beer as well as	23 A. I'm pretty sure that I had ribs.
	hattans; isn't that right?	24 Q. Anything else?

		Page 93	Page 95
1	A. No.	1	Q. Did you discuss that with him?
2	Q. Did you all order food at the same time, 3 everybody at your able?	2	A. Yes.
4	A. I'm pretty sure.	3	Q. Here's four that were ordered?
5	Q. Did you have any discussions with Mr. DiNatale 6 about how many meals were ordered by this 7 table?	4	MR. GILLIS: Are you asking did he discuss 5 that specific round?
8	A. No.	6	MR. FARAH: That's right, that specific 7 round, 9:21.
9	Q. Have you looked at Exhibit 2 to see how many 10 meals were ordered by this table?	8	A. He made reference to that login saying four 9 rounds were ordered, but we never discussed 10 each of these.
11	A. No.	11	Then this next one there was 9:24, that
12	Q. Did everybody eat? As far as you know, did 13 everybody order a meal?	12	one and then the next or whatever happened 13 about that. We didn't discuss each of them.
14	A. I believe so.	14	We discussed all of them.
15	Q. Now, do you remember Jeff, while you were 16 sitting at the table, ordering a beer?	15	He went through and he said this one at 16 this time these were ordered, and at this time 17 these were ordered and at this time these were 18 ordered.
17	A. I don't specifically remember him ordering a 18 beer at the table.	19	Q. He's telling you this; is that right?
19	Q. But you remember him drinking a beer at the 20 table; is that right?	20	MR. GILLIS: Objection.
21	A. Yes.	21	A. Yes.
22	Q. Do you remember him drinking more than one beer 23 at the table?	22	Q. What is he saying about it, besides telling you 23 this?
24	MR. GILLIS: Objection.	24	A. He was just using those as evidence for how
		Page 94	Page 96
1	A. I cannot say that for sure.	1	many Manhattans were ordered to the table, 2 trying to come up with, you know, how many 3 drinks were drinking by each person.
2	Q. You have no memory today; is that right?	4	Q. Did he ever say words to the effect, "If you 5 divide seventeen by six you get almost three"?
3	A. Right.	6	MR. GILLIS: Objection.
4	Q. You had a memory in the past but not today?	7	A. No.
5	MR. GILLIS: Objection.	8	Q. What did he say about trying to figure out how 9 many drinks were drunk by each person?
6	A. Yes.	10	A. I think he was trying to account for which 11 drinks were drinking by which people and how 12 many drinks each person had, but I don't 13 remember who had what drink and how many each 14 person had.
7	Q. Now, did Mr. DiNatale and you discuss, when you 8 were reviewing Exhibit 2, that it seems to 9 reflect that at 9:21 p.m. four Jack Daniels 10 Manhattans were ordered?	15	Q. Do you remember anyone at the table appearing 16 drunk to you that night?
11	A. Okay.	17	MR. GILLIS: Objection.
12	Q. Did you discuss that?	18	A. No.
13	A. I believe so.	19	Q. How about the Espy who was not there with you 20 that night? Did he appear under the influence 21 to you?
14	Q. Is that right, did you?	22	A. Not particularly.
15	A. Yes.	23	Q. Have you ever spoken with him since this 24 incident?
16	Q. What did he say and what did you say about 17 that?		
18	A. Well, when I mean discuss it, we didn't discuss 19 this order in particular. We discussed all of 20 them together.		
21	Q. My question to you is, can we agree, I guess 22 initially, that Exhibit 2 shows that at 9:21 23 four Jack Daniels were ordered by the table?		
24	A. Yes.		

1 A. You mean since that night?
 2 Q. Since that night.
 3 A. Yes.
 4 MR. GILLIS: The Espy?
 5 Q. The Espy that was not dirt biking with you.
 6 A. Yes.
 7 Q. Did you learn from speaking with him that he
 8 had been drinking beers in the hotel room with
 9 his two other friends that afternoon?
 10 MR. GILLIS: Objection.
 11 Q. After September 26 did you learn?
 12 A. After the restaurant when we left the
 13 restaurant?
 14 Q. No. In your conversations with Mike Espy after
 15 September 26, 2003, did he ever tell you that
 16 he had been drinking beers that afternoon,
 17 September 26, 2003, before going to the
 18 restaurant with two of his friends?
 19 A. Before the restaurant?
 20 Q. Yes.
 21 A. No.
 22 Q. He didn't tell you that?
 23 A. No.
 24 Q. Did he tell you what he had been doing that

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1 A. Well, I don't know. I mean --
 2 Q. Have you spoken to anybody, other than
 3 Mr. DiNatale?
 4 A. I know what you're talking about. I spoke
 5 to -- I just didn't think he was in the same
 6 office.
 7 I spoke to Mr. Parkinson. I thought he
 8 was in a different office.
 9 MR. GILLIS: Let's put on the record
 10 there's no one named Parkinson in my office.
 11 Q. When did you speak to Mr. Parkinson?
 12 A. It was sometime during last semester.
 13 Q. Last semester being the semester that ended
 14 when?
 15 A. About December 21.
 16 Q. Of 2005?
 17 A. Yes.
 18 Q. And your best memory of when it is that you
 19 spoke to Mr. DiNatale is when?
 20 A. It was over break.
 21 Q. Is that after December 21, 2005?
 22 A. Yes.
 23 Q. When is your best memory?
 24 A. Let me think for a minute. I went on vacation.

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1 afternoon before he came to the restaurant?
 2 A. I mean, when you said I've spoken with him,
 3 I've spoken to him because my brother is
 4 friends with him.
 5 He's a little bit closer in age to some of
 6 these kids, and he every once in a while will
 7 hang out with them.
 8 I actually play on an indoor soccer team
 9 with Scott, and his brother will come every
 10 once in a while and I'll speak to him, but we
 11 never discussed that night.
 12 Q. Who have you discussed that night with?
 13 A. Other than you and people that I have been
 14 deposed to talk to or the grand jury or
 15 Mr. DiNatale or the state police or anyone else
 16 that had me come in and talk to them.
 17 Q. You have not spoken to Mr. Gillis prior to
 18 today, have you?
 19 A. No.
 20 Q. How about anyone from his office? Have you
 21 spoken to anyone from his office prior to
 22 today?
 23 A. No.
 24 Q. Are you sure?

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1 I had to reschedule this because I was going on
 2 vacation just after New Year's, and I remember
 3 speaking to him like on the phone.
 4 He was saying that I want to meet with
 5 you, and then I went on vacation and it was
 6 probably two weeks after that, I want to say.
 7 Q. When did you come back from vacation?
 8 A. I came back, I think like -- Does anyone have a
 9 calendar?
 10 Q. Give me your best estimate.
 11 A. It was probably the eighth of January.
 12 Q. And approximately two weeks after that you
 13 spoke to Mr. DiNatale; is that right?
 14 MR. GILLIS: Objection.
 15 A. Yes. So I guess I said it was a month ago, but
 16 I guess it was not a month ago.
 17 Q. Mr. Parkinson is someone you spoke to before
 18 the end of the semester; is that right?
 19 A. Correct.
 20 Q. The semester ended December 21. What is your
 21 best memory of when you spoke to Mr. Parkinson?
 22 A. I can't say for sure. I know I met with him
 23 two different times, and the first time he
 24 asked me some questions about that night, and

		Page 101	Page 103
1	he came up with an affidavit, something similar	1	him just sort of having a notepad, and I went
2	to this, and then he sent it to me, and he	2	through the events of the night, and I'm pretty
3	wanted me to return it, but then he called me	3	sure that is all we did.
4	and said, "I'll just meet you again to get it	4	Q. Do you remember him referring to your
5	from you," so he could see me sign so I don't	5	deposition testimony at all?
6	have to go to the notary.	6	A. No.
7	So then I met with him again, and then he	7	Q. Do you remember him referring to the statement
8	had to make like a new one or he had to change	8	you gave the police which has been marked as an
9	something.	9	exhibit in your deposition today, Exhibit 3?
10	I remember what it was. He said we were	10	A. I kind of remember him mentioning that. We
11	dirt biking in Leominster, and I wanted him to	11	didn't discuss it, but I remember him
12	change it to Templeton, and I had to go to the	12	mentioning that I had made a statement to the
13	notary and send it to him.	13	state police.
14	Q. And who did you understand Mr. Parkinson was	14	Q. Do you remember him mentioning the affidavit
15	working for?	15	that you made in the other case which has been
16	A. He said that he was representing Rare	16	marked as Exhibit 4 today?
17	Hospitality.	17	A. Well, I remember him saying that or him asking
18	Q. What is your best memory of when you met with	18	me who I have spoken with or who have I been
19	Mr. Parkinson?	19	deposed by, and I told him I came in here once
20	A. Maybe mid November, early November.	20	and that I had done the grand jury thing.
21	Q. And where did you meet with him?	21	Q. Did he say whether or not he knew you had been
22	A. In Leominster at the restaurant Panera Bread.	22	deposed before?
23	Q. P-a-n-e-r-a?	23	A. No.
24	A. Yes.	24	Q. Did he seem surprised when you told him you had
		Page 102	Page 104
1	Q. And who else was there?	1	come in here and been deposed?
2	A. It was just me and Mr. Parkinson.	2	A. No.
3	Q. How old is Mr. Parkinson?	3	Q. Did he seem surprised when you told him that
4	A. I don't know.	4	you had done the grand jury thing?
5	Q. Did he give you a card?	5	A. No.
6	A. No. He wrote down a cellphone number, and he	6	Q. And you were with him thirty-five minutes or
7	didn't give me a card.	7	so; is that right?
8	Q. Do you still have that information?	8	A. Around then.
9	A. No.	9	Q. Tell me what you remember him saying and what
10	Q. You threw it away?	10	you remember yourself saying during that
11	A. I just lost track of it.	11	meeting.
12	Q. How long were you with him that first time?	12	A. Well, I remember we kind of introduced
13	A. Well, we met over lunch, so maybe thirty-five	13	ourselves. We didn't know each other, and he
14	minutes or so.	14	asked me a similar scenario to when I meet with
15	Q. He paid for lunch?	15	people I don't know. They ask me if I'm in
16	A. Yes, he did.	16	school, what I'm studying, what kind of things
17	Q. And he was taking notes of your conversation?	17	I like to do.
18	A. He was.	18	He mentioned that he just moved up here
19	Q. What was he talking to you about?	19	with I don't know whether it was his wife or
20	A. Well, he just sort of wanted me to run through	20	fiancee, and I asked him if he had been skiing
21	the events as I remembered them.	21	and such and he said a little bit, and he asked
22	Q. Did he refer to your testimony in the grand	22	me where any good places were.
23	jury at all?	23	Q. To do what?
24	A. I don't remember him referring to -- I remember	24	A. To go skiing, and I mentioned a few places that

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1 I liked, and then he, you know, he told me that	1 Q. So when he told you that you were going to be	
2 he wanted me to run through the course of the	2 asked when you go into the deposition how much	
3 evening as I remembered it.	3 Jeff had to drink, did he say anything else	
4 Q. So what did you do?	4 about that?	
5 A. I basically just told him what I remembered,	5 A. I believe he asked me if I remembered any, you	
6 starting from when I went to the dirt bike	6 know, noticeable signs of him being drunk or --	
7 track until Scott dropped me off.	7 Q. "Noticeable signs"? Is that what he said?	
8 Q. And what did he say during that?	8 A. I don't know how he stated it.	
9 A. He didn't really say much. He just let me	9 Q. What did you say?	
10 talk.	10 A. I believe I told him that I didn't see any	
11 Q. Just took notes?	11 clear signs of him being drunk.	
12 A. Yes.	12 Q. What else did he say about that?	
13 Q. Didn't ask you any questions?	13 A. Well, I don't know. I don't remember. I	
14 A. He may have. I don't remember him specifically	14 remember that.	
15 asking any questions.	15 Q. What else do you remember him saying that day?	
16 Q. You just talked?	16 A. I remember him saying that I, being the one	
17 A. Yes.	17 that had not been drinking that night, was kind	
18 Q. He said, "What happened? Tell me what	18 of a big factor in what, I guess, the final	
19 happened"?	19 decision, how the case plays out.	
20 A. Yes. I remember him saying that he wanted to	20 Q. He told you that?	
21 hear the whole story from me as I remember it.	21 A. Yes. One thing I remember specifically about	
22 So he just let me go through the events.	22 when I met with John DiNatale, I remember him	
23 Q. And did he stop you at any point to ask you	23 specifically mentioning these words.	
24 questions, like how much did Jeff have to	He said, "Tell the truth and let the cards	
Page 106		Page 108
1 drink?	1 fall where they will."	
2 A. Yes, he did. Well, I don't know if he asked me	2 Q. Did you need DiNatale to tell you to tell the	
3 that question.	3 truth?	
4 I remember him stopping and asking me	4 MR. GILLIS: Objection.	
5 like, you know, you're going to be asked when	5 A. No.	
6 you go into your deposition how many drinks	6 Q. Tell me what else Mr. Parkinson -- By the way,	
7 Jeff had and such, when I got to that point in	7 I asked you how old he was. He never gave you	
8 the narrative.	8 a card?	
9 Q. He told you that you would be asked that during	9 A. No, he didn't.	
10 the deposition; is that right?	10 Q. Never told you where he worked?	
11 A. Yes.	11 A. Well, he told me that he had just moved up	
12 Q. And what did he say about that?	12 here, and he said where he was living, but I	
13 A. He told me that what I remembered is what I	13 don't remember.	
14 needed to tell.	He said he was working in Boston or	
15 Q. Now, did you tell him at that point that you	15 Cambridge or somewhere.	
16 had already been deposed and told what you	16 Q. Working for Rare or representing Rare?	
17 remembered back in August of 2004?	17 A. Yes.	
18 MR. GILLIS: Objection.	18 Q. Did he tell you that he was a lawyer?	
19 A. I don't think so. I don't think I made	19 A. Yes, an attorney or lawyer. He said he was	
20 reference to that.	20 representing Rare Hospitality.	
21 I think I might have said, "Well, I have	21 Q. Your best memory is that this conversation	
22 already been deposed." I honestly don't know.	22 occurred in November?	
23 I never told him that "I said this"	23 A. Yes.	
24 because I didn't remember.	24 Q. And what else did you say to him or he say to	

1 you during that Panera Bread meeting?

2 A. Well, he wanted to make sure that after I had

3 gone through my narrative that he asked me if

4 that's how I remember it and if there's

5 anything else I remembered.

6 He wanted to make sure that I had told the

7 story as I remembered it, and that was pretty

8 much it.

9 Q. Then he met with you a second time; is that

10 right?

11 A. He did.

12 Q. And how long after the first visit was it that

13 you met with Mr. Parkinson again?

14 A. Maybe like two weeks.

15 Q. Where was that meeting?

16 A. It was the same place.

17 Q. Lunch again?

18 A. Yes.

19 Q. Mr. Parkinson paid again?

20 A. Correct.

21 Q. And did he have a document for you at that

22 time?

23 A. He had talked to me on the phone, and I told

24 him that I wanted to make some changes, and

1 then he brought the document down so that I

2 could make the changes and tell him what I

3 wanted to change.

4 Q. So am I correct that in between the first

5 meeting at Panera Bread and the second meeting,

6 he sent you a document somehow?

7 A. No. If I said that, that's incorrect. He sent

8 it after the second meeting.

9 Q. There was a second meeting with him?

10 A. Yes.

11 Q. At the second meeting, did he have a document

12 with him?

13 A. Yes.

14 Q. Did you read the document at the second

15 meeting?

16 A. Yes.

17 Q. There were things in it that were not right?

18 A. Yes. As I told you before, he made the

19 mistake. It's not essential, but I wanted it

20 to be right.

21 He said we were dirt biking in the

22 Leominster area, and I said well, it was

23 technically in Templeton.

24 So he said he wanted to make sure it was

1 all correct. He wanted to have it done.

2 Q. Were there any other changes he wanted made in

3 that document?

4 A. No.

5 Q. Did the document speak to how much Jeff had to

6 drink that night?

7 A. Yes.

8 Q. And did the document speak to how much he had

9 at the bar?

10 A. Yes. I think it more generally spoke about

11 everything he had to drink as opposed to what

12 he drank here and at the table.

13 Q. At the second meeting with Mr. Parkinson, did

14 you discuss with him that you had already given

15 statements, either in writing or under oath,

16 before the grand jury or at a deposition about

17 how much Jeff had had to drink?

18 A. What do you mean by "discussing"?

19 Q. Well, was there any discussion about whether or

20 not the document that Mr. Parkinson wanted you

21 to sign was going to align with the statements

22 you had given earlier both in the grand jury

23 and at deposition under oath and the written

24 statements?

1 A. When I ran through the narrative, I'm pretty

2 sure I remember him saying, "Well, you know

3 what you said here is along the lines of what

4 has been said in the grand jury and what other

5 people have said." It was something along the

6 lines of that.

7 Q. Well, were you concerned at all with respect to

8 the Parkinson document about whether or not

9 what you were saying in the Parkinson document

10 was going to align with what you had testified

11 to at your deposition back in August?

12 A. Well, I didn't really remember what I had said

13 in the deposition. So I could not really make

14 a judgment on if there were going to be

15 differences.

16 I just assumed that there was going to be

17 what I thought happened.

18 MR. FARAH: Why don't we take a break?

19 (Luncheon recess.)

		Page 113	Page 115
1	AFTERNOON SESSION		
2	Q. So you had a second meeting with Mr. Parkerson; is that correct?		1 night?"
3	A. Yes.		2 MR. GILLIS: Page, please?
4	Q. And he presented you with a document to sign at that meeting?		3 MR. FARRAH: 19.
5	A. Yes, he did.		4 Q. Do you see that question?
6	Q. You didn't like some of the things that were in it; is that right?		5 A. Yes.
7	A. Yes.		6 Q. Do you remember your answer? Can you read it for the record?
8	Q. So what did you do after that with respect to Mr. Parkerson?		7 A. "I would say that he probably, that he had probably two to three beers and a couple of Manhattans. I would say he had two beers, maybe three. I can't specifically recall."
9	A. He went back to his office, and I'm not sure what the time frame was, and he came up with a new one and sent it to me, and I had to bring it to the notary, sign it, and send it back to him.		8 Q. Let's try that one more time. Could you read it again?
10	Q. Did you do that?		9 A. "I would say he had probably two to three beers and a couple of Manhattans. I would say he had two, maybe three. I can't specifically recall."
11	A. Yes.		10 Q. And when you were saying "two, maybe three," were you referring to Manhattans in your grand jury testimony?
12	Q. Did you keep a copy of that document?		11 A. I don't know.
13	A. No, I don't think so.		12 Q. Do you have any explanation as to why your testimony today with respect to how many beers he drank at the table that night is different
14	Q. And did you ever hear from Mr. Parkerson again?		13
15	A. No.		
		Page 114	Page 116
1	Q. Now, do you remember testifying before the grand jury?		1 from what you testified to before the grand jury?
2	A. Yes, I do.		2 MR. GILLIS: Objection.
3	Q. Do you remember being asked the question, "When you were seated once your table was available, do you know if you checked out at the bar, or did the tab move to the table?"		3 A. The bill.
4	Do you remember being asked that question?		4 Q. Seeing the bill with Mr. DiNatale?
5	MR. GILLIS: What page are you reading from?		5 A. Just seeing the bill, I mean, shows that there are two.
6	MR. FARRAH: 17.		6 Q. Two beers that were served at the table?
7	A. I don't know.		7 A. Yes.
8	Q. Do you remember your answer? Can you read it into the record?		8 Q. One at 8:40 and the other one at 9:15?
9	A. "I'm pretty sure we checked out at the bar."		9 A. Correct.
10	Q. And do you have any explanation as to why your testimony is now different from what you testified to the grand jury on the question of whether or not the bar tab went to the table?		10 Q. What is it about those two beers that were served at the table that is inconsistent with your testimony before the grand jury that Jeff probably had two to three beers with dinner at the table?
11	MR. GILLIS: Objection.		11 A. Well, I said that there were two to three beers drinking at the table, and there were only two beers ordered to the table.
12	A. No.		12 So I know that the three is out of the question, and I believe that Scott was drinking beer at the table as well.
13	Q. Do you remember being asked the question before the grand jury, "What do you believe Jeffrey Southworth had to drink at the table that		13 So I can't say for sure, but I presume that one of the beers ordered at the table in

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1 Exhibit 2 went to him but I didn't log it in.
 2 I can't say for sure.
 3 Q. You presume one of the beers that is shown on
 4 Exhibit 2 went to him while he was at the
 5 table?
 6 A. Yes.
 7 Q. And the other beer, you presume, went to Jeff
 8 while he was sitting at the table?
 9 MR. GILLIS: Objection.
 10 A. Yes.
 11 Q. So help me out with your testimony this morning
 12 that you had discussions with Mr. DiNatale
 13 about the beers reflected on Exhibit 2 are the
 14 beers that were served at the bar.
 15 A. What is that again?
 16 Q. Before you saw what has been marked as
 17 Exhibit 2, you testified at the grand jury that
 18 your best memory was Jeff had two to three
 19 beers while he was sitting at dinner; is that
 20 right?
 21 MR. GILLIS: Objection.
 22 A. Yes.
 23 Q. Do you see it?
 24 A. Yes.

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1 deposition; is that right?
 2 A. Yes.
 3 Q. And before you saw Exhibit 2, your best memory
 4 about how many beers Jeff had at the bar is
 5 what is reflected in your deposition; is that
 6 right?
 7 MR. GILLIS: Objection.
 8 A. Yes.
 9 Q. Now, Exhibit 2 indicates that the check was
 10 paid at 9:57 p.m. Do you see that?
 11 A. Yes.
 12 Q. And after paying the check, where did you go?
 13 I'm sorry. You did not pay for yourself; is
 14 that right?
 15 A. Correct.
 16 Q. Jeff paid for you?
 17 A. Yes.
 18 Q. Once the check was paid, you left the
 19 restaurant; is that right?
 20 A. Yes.
 21 Q. And that was about 9:57 p.m.; is that right?
 22 MR. GILLIS: Objection.
 23 A. Yes, or shortly after.
 24 Q. And where did you go?

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1 Q. Before you saw Exhibit 2, you testified at your
 2 deposition that Jeff had maybe four beers while
 3 he was sitting at the table; is that correct?
 4 MR. GILLIS: Objection.
 5 Q. Do you remember that testimony?
 6 A. Yes. It's in here.
 7 Q. And before you saw Exhibit 2, you gave a
 8 written statement to Trooper Sullivan, which
 9 has been marked as Exhibit 3 in this
 10 deposition, that Jeff had a couple of beers,
 11 maybe two, and three drinks at dinner. Do you
 12 see that?
 13 A. Yes.
 14 Q. And is it accurate to say that except for what
 15 you believe Exhibit 2 shows, your earlier
 16 testimony regarding the number of beers he had
 17 at the table is your best memory of what he had
 18 at the table?
 19 MR. GILLIS: Objection.
 20 A. Yes.
 21 Q. Before you saw Exhibit 2, your best memory
 22 regarding the number of Jack Daniels Manhattans
 23 that Jeff had with dinner is what is reflected
 24 in your grand jury testimony and your

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1 A. We went to the hotel that the two people that I
 2 didn't know were staying at.
 3 Q. And had the seating arrangement in the car
 4 changed or the truck changed at that point?
 5 A. Yes.
 6 Q. You were in the front; is that right?
 7 A. I think so, yes.
 8 Q. Jeff was in the back with his dogs; is that
 9 right?
 10 A. Yes.
 11 Q. Can you tell me why Jeff went in the back with
 12 the dogs?
 13 A. Other than the fact that the dogs are
 14 Rottweilers and they had been in the truck for
 15 quite some time, you know, maybe he wanted -- I
 16 can't say. I don't know.
 17 Q. Did he say anything about why he wanted to go
 18 in the back with the dogs?
 19 A. No.
 20 Q. Did he fall asleep in the back with the dogs
 21 during the trip out of the Longhorn?
 22 A. No.
 23 Q. And where did you go from there?
 24 A. To the hotel.

1 Q. Which hotel?
 2 A. I think it's called the Four Points or Four
 3 Seasons or Four something.
 4 Q. And what did you do there?
 5 A. The two people that were staying there, they
 6 wanted to go change or they went into their
 7 room, and we were waiting outside in the
 8 hallway, and we were talking to these two guys
 9 that were there.
 10 There was a music festival that was going
 11 on at the airport next to the hotel. So there
 12 were a lot of people staying there, and there
 13 were two bouncers or security guards for a
 14 certain band who we were talking to out in the
 15 hall.
 16 Q. And where was Jeff while you guys were at the
 17 Four Points Hotel?
 18 A. He was in the hallway with us.
 19 Q. By the way, just a few wrap-up type questions.
 20 I may have asked you this already.
 21 What was the age of the waitress who
 22 served you guys?
 23 MR. GILLIS: Objection.
 24 Q. Can you estimate for me the age of the waitress

1 that served you guys?
 2 A. Early to mid twenties.
 3 Q. Okay, and do you have a memory of whether or
 4 not any other waitresses or waiters served your
 5 table that night?
 6 A. I don't believe so.
 7 Q. Did you say you had steak that night or ribs?
 8 A. I think I told you I had ribs.
 9 Q. Do you remember you had ribs or are you not
 10 sure?
 11 A. I thought I had ribs. I'm not 100 percent sure
 12 on it.
 13 Q. Okay. You were not wearing a watch that night;
 14 is that right?
 15 A. Yes.
 16 Q. And did Jeff have anything to drink while you
 17 were at the Four Points?
 18 A. He did.
 19 Q. What did he have there?
 20 A. He had a beer.
 21 Q. Twelve-ounce? Sixteen-ounce? Do you know?
 22 A. I think it was a twelve-ounce. I'm pretty sure
 23 it was a can.
 24 Q. And am I correct -- I think I asked you this

1 already. I know I asked you in the Superior
 2 Court case. The size of the container of the
 3 beers that Jeff had or whatever amount of beer
 4 he had at the bar and whatever amount he had at
 5 the table, they were all in the same size
 6 container; is that right?
 7 MR. GILLIS: Objection.
 8 A. Yes.
 9 Q. Were they all in the same size container -- the
 10 beers at the table and the beers at the bar?
 11 MR. GILLIS: Objection.
 12 A. I believe so.
 13 Q. And then from the hotel, where did you all go?
 14 A. We went to the Other Side, which is a strip
 15 club.
 16 Q. Approximately, how long were you at the hotel,
 17 best memory?
 18 A. Anywhere from half an hour to forty minutes.
 19 Q. Okay, and how long did it take you to get from
 20 the Longhorn to the hotel?
 21 A. Maybe like five minutes. It's pretty close.
 22 Q. Do you remember testifying ten to fifteen
 23 minutes before?
 24 A. I think so.

1 MR. GILLIS: What page?
 2 MR. FARRAH: Page 53.
 3 Q. Is it is your best memory as you sit here today
 4 it was ten minutes more or less?
 5 MR. GILLIS: Objection.
 6 A. Yes.
 7 Q. And then you drove from the hotel to the strip
 8 club; is that right?
 9 A. Correct.
 10 Q. Who was in the car when you did that?
 11 A. It was myself, Scott, his brother Mike and
 12 Jeff.
 13 Q. Had Mike been in the car on the trip from the
 14 Longhorn to the hotel?
 15 A. He was not.
 16 Q. What was the seating arrangement in the ride
 17 from the hotel to the strip club?
 18 A. I was in the passenger seat, and Scott was
 19 driving, and Jeff and Mike were in the back.
 20 Q. Was Jeff asleep on the ride to the strip club?
 21 MR. GILLIS: Objection.
 22 A. I don't think so.
 23 Q. Was the plan initially to go into the strip
 24 club?

1 A. It was.
 2 Q. But that changed at some point in time; is that
 3 right?
 4 A. Yes.
 5 Q. And what brought about that change?
 6 A. Well, I actually didn't even want to go to
 7 dinner. I wanted to go back, so Jeff offered
 8 to buy me dinner and I said yes, and then when
 9 we were going there, I probably said something
 10 like I had class in the morning.
 11 I honestly don't remember how we came to
 12 the decision, but I think Scott and I decided
 13 we didn't want to stay out too much later.
 14 Q. Okay, and so you guys did not go to the strip
 15 club; is that right?
 16 A. Correct.
 17 Q. But you dropped off Scott's brother there; is
 18 that right?
 19 A. Yes.
 20 Q. And then where did you go from the Other Side?
 21 A. We went to the apartment or housing complex
 22 where Scott's truck was in Littleton.
 23 Q. Approximately, how long did it take you guys to
 24 go from the Other Side to the apartment complex

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1 in Littleton?
 2 A. Maybe thirty to thirty-five minutes.
 3 Q. And the apartment complex is just off of
 4 Route 495; is that right?
 5 A. Yes.
 6 Q. And was there any discussion on route between
 7 some or all of the three about whether or not
 8 Jeff should drive his truck?
 9 A. Not that I remember.
 10 Q. Do you remember anyone saying in effect, "Jeff,
 11 you're too drunk to drive"?
 12 MR. GILLIS: Objection.
 13 A. No.
 14 Q. Where was Jeff on the ride from the Other Side
 15 to the apartment complex?
 16 A. He was in the back.
 17 Q. Still in the back?
 18 A. Yes.
 19 Q. Sleeping or awake?
 20 A. He was awake, I'm pretty sure.
 21 Q. And when you got to the apartment complex, what
 22 happened?
 23 A. Well, I jumped out and I grabbed my bag off the
 24 back of the truck, and actually, I don't know

1 if I had my bag with me.
 2 I know I had to grab something, some sort
 3 of dirt biking gear. It might have been my
 4 boots or something. I jumped off and brought
 5 it over to Scott's truck.
 6 Q. Then what happened?
 7 A. Jeff left.
 8 Q. Jeff left the apartment complex?
 9 A. Correct.
 10 Q. So he left the back seat and got into the
 11 driver's side?
 12 A. Yes.
 13 Q. Did something happen when Jeff was leaving the
 14 apartment complex?
 15 A. Yes.
 16 Q. What happened?
 17 A. Actually, I didn't see it, but apparently, he
 18 must have backed over or ran over part of
 19 Scott's foot.
 20 Q. Did you hear Scott say something as Jeff was
 21 leaving or soon after Jeff left?
 22 A. Yes, soon after.
 23 Q. What did he say?
 24 A. He started complaining about his ankle hurting,

1 and he said that he backed over it, ran over
 2 it.
 3 Q. Do you remember while you were at the
 4 restaurant the waitress asking anyone in your
 5 group for an ID, some proof of age?
 6 A. I don't recall.
 7 Q. Do you remember? That is my question.
 8 A. I do not remember anyone being IDed.
 9 Q. Do you remember anyone being IDed at the bar?
 10 A. Well, I don't remember that either.
 11 Q. Okay. Now, after Scott made some statement
 12 about Jeff running over his foot, what happened
 13 next?
 14 A. We went to get into Scott's truck, and he
 15 realized he didn't have his keys.
 16 Q. Okay. So what happened at that point?
 17 A. We tried calling Jeff to let him know that he
 18 had to turn around and bring us the keys.
 19 Q. And you called from a cellphone; is that right?
 20 A. Yes.
 21 Q. How long did it take you to get through to
 22 Jeff?
 23 A. Maybe five, ten minutes.
 24 Q. And what was the conversation that you had with

1 Jeff at that point? Was it you, by the way,
 2 that had the conversation?
 3 A. I believe it was. I know from that point on,
 4 there were two conversations with him.
 5 Q. Tell me about the first one.
 6 A. I told him that he had the keys -- he had
 7 Scott's keys -- and that he had backed over
 8 Scott's foot when he was leaving.
 9 Q. And what did Jeff say?
 10 A. He didn't say much. I don't even quite
 11 remember him telling me he was going to turn
 12 around.
 13 Q. And again, the apartment complex which in the
 14 parking lot of which you were calling Jeff from
 15 that night was located how far from Route 495?
 16 A. One hundred yards.
 17 Q. And so after that conversation with Jeff, did
 18 you see Jeff later on that night?
 19 A. No.
 20 Q. At some point in time after that conversation
 21 with Jeff, did you try to have another
 22 conversation with him? Did you try to call him
 23 on the phone?
 24 A. Yes.

1 A. Yes.
 2 Q. What did you do?
 3 A. We broke into the truck by smashing out the
 4 sliding glass door in the back windshield.
 5 Q. On the back?
 6 A. Yes. We knew he had a spare key in the car.
 7 Q. And after you had cleared away whatever you
 8 needed to clear away to get into the car, what
 9 did you do next?
 10 A. I don't know whether we had talked to Jeff at
 11 that point or we started driving.
 12 We must have talked to him again by that
 13 point because we would have just gone back
 14 home.
 15 Q. Do you remember having a second conversation
 16 with Jeff that night after he left the
 17 apartment complex parking lot?
 18 A. Yes.
 19 Q. Was that conversation with you or with Scott?
 20 A. I believe it was with me.
 21 Q. Tell me what you remember about that
 22 conversation.
 23 A. I remember him saying -- Yes, it was with me.
 24 I remember him saying he had been in an

1 Q. Did you wait for Jeff to come back?
 2 A. We did.
 3 Q. Can you tell me approximately how long you
 4 waited for Jeff to come back?
 5 A. Probably close to twenty minutes.
 6 Q. Do you remember testifying at your
 7 deposition -- this is on page 66 -- that it was
 8 probably maybe half an hour that you waited?
 9 A. Okay.
 10 Q. Do you see that?
 11 A. It could have been a half an hour. I'm sure
 12 that this is more accurate than what I remember
 13 today.
 14 Q. Your deposition?
 15 A. Yes.
 16 Q. In all respects?
 17 MR. GILLIS: Objection.
 18 A. In that respect at least.
 19 MR. GILLIS: I move to strike that last
 20 comment.
 21 MR. FARRAH: I thought we were reserving
 22 motions to strike until trial.
 23 Q. At some point in time did the two of you take
 24 some action to be able to drive the truck?

1 accident and that I was like immediately,
 2 "Where are you," and he didn't really say that
 3 much.
 4 I'm pretty sure it got cut off, and we
 5 decided to go try and find the accident. We
 6 didn't know what happened.
 7 Q. So was it at that point that you got on 495?
 8 A. Yes.
 9 Q. If you had been heading home that night as
 10 opposed to looking for Jeff, which way would
 11 you have headed on 495 from the apartment
 12 complex?
 13 A. We would not have gotten on 495.
 14 Q. At all?
 15 A. Correct.
 16 Q. When you got on 495, in which direction did you
 17 head?
 18 A. North.
 19 Q. Why was that?
 20 A. Jeff was going home, which was north.
 21 Q. Where did you understand he lived at that time?
 22 A. In Portsmouth.
 23 Q. New Hampshire?
 24 A. Yes.

1 Q. And when you got on 495 North, what happened?
 2 A. Well, we drove and we didn't see anything and
 3 we were going to turn around, and then we
 4 decided to drive a little bit farther, and as
 5 we were getting close to the Westford exit, we
 6 saw an accident scene with like all sorts of
 7 ambulances and police cars and just a lot of
 8 emergency vehicles, lights going on the
 9 southbound side.

10 Q. The southbound side of 495?

11 A. Yes.

12 Q. How many exits down from where the apartment
 13 complex was, was it that you had traveled
 14 before you saw the accident scene?

15 A. I think Westford is two up from where we got
 16 on.

17 Q. Had you passed the Westford exit when you saw
 18 this accident scene?

19 A. No.

20 Q. So this was before the Westford exit on 495
 21 North that you saw the accident scene on the
 22 other side of the highway; is that right?

23 A. Yes.

24 Q. What did you do?

1 yet. We got off at the Littleton exit.

2 We drove on this back road and tried
 3 calling him and telling him. I think we left
 4 him a voice mail saying, "Where are you? Are
 5 you all right? Give us a call. Let us know
 6 what is going on," but we could not get ahold
 7 of him.

8 So what we did was we decided to drive up
 9 to Westford again one more time to see if we
 10 could see if that was his accident, if we could
 11 see his truck.

12 Q. Did you have any luck?

13 A. No.

14 Q. Prior to September 26, 2003, had you ever seen
 15 Jeff when you believed he was under the
 16 influence of alcoholic beverages?

17 A. I think so once.

18 Q. Did he exhibit some of the same signs you saw
 19 the night of September 26, 2003 that night?

20 MR. GILLIS: Objection.

21 A. You know, I'd seen him when I thought he was a
 22 little bit drunk, but I mean I just assumed
 23 that he was drunk. I cannot say that he was.

24 It was at that party that I mentioned before.

1 A. We got off at the Westford exit, and we started
 2 heading southbound so we could drive by the
 3 accident.

4 Q. Did you call Jeff at all during that time?

5 A. Yes.

6 Q. And were you able to reach him at all?

7 A. No.

8 Q. What did you see when you drove by on 495
 9 southbound now?

10 A. We couldn't see anything. It looked like an
 11 accident. All we could see was police cars and
 12 the police and EMTs and ambulances.

13 We didn't see any cars that had been in an
 14 accident, specifically the truck. That was
 15 what we were looking for and the dirt bikes.

16 Q. And did you make any other efforts to find Jeff
 17 that night?

18 A. Yes.

19 Q. What were those efforts? Describe those for
 20 me, if you could.

21 A. We circled back up north to get off of the
 22 Westford exit again.

23 Q. Then what happened?

24 A. No, that's incorrect. We didn't circle back

1 Q. Were people drinking at that party?

2 A. Yes. That's why I assumed he was drunk.

3 Q. What sorts of things did he exhibit that led
 4 you to assume he was drunk?

5 A. Well, I didn't notice anything he was
 6 exhibiting. I sort of just figured that he was
 7 drunk or on his way to being drunk since he had
 8 been at the party and other people were there,
 9 and they were drinking.

10 Q. Was he louder than usual at that party?

11 A. I didn't notice him being loud.

12 Q. Were his eyes glassy at all at the party?

13 A. I could not tell you.

14 Q. What is it that led you to say a few moments
 15 ago that he had exhibited signs of intoxication
 16 in the past to you?

17 A. Actually, I remember one thing. When we went
 18 outside, he was getting one of his dogs all
 19 riled up.

20 They're Rottweilers. So they can be
 21 nasty. I mean they're pretty good dogs.

22 I remember him getting one of them all
 23 riled up and like kind of pointing to someone
 24 because he was a very well-behaved dog, and if

<p>1 you pointed at someone and you started going 2 after them, say you grabbed his arm, the dog 3 would jump up on him and try to think he needed 4 to protect him, and I remember that happened. 5 That was something that he normally didn't do. 6 Q. My question to you is, what is it that he was 7 exhibiting that night prior to September 26, 8 2003 that leads you to say he was exhibiting 9 signs of being intoxicated? 10 A. It would be getting his dog all riled up. 11 Q. Anything else? 12 A. No. 13 Q. You're sure? 14 A. Yes. I was not really paying attention that 15 well. I was not even there that long. 16 Q. But you believed he was exhibiting signs of 17 intoxication that night; is that right? 18 A. Yes. 19 Q. Okay. Now, at some point in time, did you meet 20 with the police to talk about the events of 21 September 26? 22 A. The state police? 23 Q. Any police. 24 A. I remember going to the state police in Concord</p>	<p>Page 137</p> <p>1 A. Yes. I remember him calling me and telling me 2 that he wanted me to meet with him, and he 3 could come down or I could come down and meet 4 him, and I said I would come down, and I think 5 it was the same day that I talked to him and 6 went down there. 7 Q. But it was five weeks after the accident? 8 A. Yes. 9 Q. That refreshes your memory? 10 A. Yes. 11 Q. In between that time, September 26, 2003 and 12 November 2, 2003, did you give anybody else any 13 statements about the accident? 14 A. I don't think so. 15 Q. Or about that night, did you give anybody else 16 any statements about that night? 17 A. No. 18 Q. When did you learn that Jeff had been in this 19 accident? 20 A. It was the next day. A friend of mine called 21 me and told me that he saw the accident on the 22 news and that he saw something about Jeff being 23 in an accident on the news. 24 Q. Can you just describe how it was that you gave</p>
<p>1 and talking to one of the troopers. 2 Q. Trooper Sullivan? 3 A. Yes. 4 Q. How long was that after the accident? 5 A. I think it was pretty short. I can't say for 6 sure. It was a couple of days. 7 Q. Did you tell him what had happened that night? 8 A. I told him a little about what happened, but he 9 wanted me to just write it all down. 10 Q. Okay, and did you write it all down for him? 11 A. Yes. 12 Q. Now, what has been marked as Exhibit 3 in your 13 deposition has a date of November 2, 2003, 14 3:25 p.m. Do you see that? 15 A. Yes. 16 Q. That's five-and-a-half weeks, six weeks after 17 the accident; can we agree? 18 A. Yes. 19 Q. Do you remember that you had met with him 20 before November 2, 2003? This is Trooper 21 Sullivan. 22 A. No. 23 Q. Do you remember only one meeting with 24 Trooper Sullivan?</p>	<p>Page 138</p> <p>Page 140</p> <p>1 this statement to the state police? 2 A. Yes. I went into the barracks and I had to 3 give them some ID and show them who I was, and 4 they took me into one of the offices and sat me 5 down and asked me if I was with Jeff that night 6 and if I was in fact Jude and some questions 7 like that. 8 Then he said, "All right. Now, I want you 9 to write what you remember down and give me a 10 statement on paper." 11 Q. And that's what you did? 12 A. Yes. 13 Q. How long were you with him that day? 14 A. It was probably under an hour. It was not 15 extremely long. 16 Q. Anybody else there besides the trooper and you? 17 A. No. 18 Q. Was your meeting tape recorded, do you know? 19 A. I don't know. 20 Q. Was your meeting with DiNatale tape recorded? 21 A. I don't think so. 22 Q. How about with the lawyer -- I can't remember 23 his name now -- Parkerson, was that tape 24 recorded?</p>

Page 1

1 A. I don't think so.
2 Q. Did anybody ask you for permission to tape
3 record in any of the meetings you had to
4 discuss what happened?
5 A. I kind of remember someone asking me, but I
6 don't know whether it was one of these meetings
7 or a meeting where I was in a place in here.
8 Maybe it might have been when I had to
9 testify -- I can't say for sure. I just
10 remember someone saying, "I'm going to be tape
11 recording you."
12 Q. Is that your handwriting on Exhibit 3?
13 A. Yes.
14 Q. And did anybody in any way influence what you
15 wrote on Exhibit 3 at the time you were writing
16 it?
17 A. No.
18 Q. Did anybody put words in your mouth?
19 A. No.
20 Q. Did anybody suggest anything to you?
21 A. No.
22 Q. And then you testified at the grand jury; is
23 that right?
24 A. Yes.

Page

1 MR. FARRAH: Michael, I think I'm just
2 about done. Give me a minute to run out and
3 I'll be right back.
4 (Short recess.)
5 Q. Did you sign a statement for DiNatale?
6 A. No.
7 Q. You did sign a statement for Parkerson?
8 A. Yes.
9 Q. You're sure you didn't sign a statement for
10 DiNatale?
11 A. I don't remember. I don't know.
12 Q. It was not that long ago -- two weeks.
13 A. It was a little bit longer than that.
14 Q. But you don't remember?
15 A. I don't remember.
16 MR. FARRAH: Thanks. I'm done.
17
18 CROSS-EXAMINATION
19
20 BY MR. GILLIS:
21 Q. Mr. Connelly, you have in front of you
22 Exhibit 3, your statement there, and when you
23 said in that statement that he had a couple of
24 beers, maybe two and maybe three drinks, that

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1 Q. And did you testify truthfully before the grand
2 jury to the best of your ability?
3 A. Yes.
4 Q. And approximately how long was that after the
5 meeting with the state trooper, if you know?
6 A. I don't know. I think it was sometime after.
7 Q. And then in between then, when you testified
8 before the grand jury and when you testified at
9 your deposition in August of 2004, did anybody
10 that you understood was representing anyone
11 involved in either a civil or criminal lawsuit
12 contact you to discuss what happened the
13 evening of September 26, 2003?
14 A. No.
15 Q. And when you came to testify on August of 2004,
16 that was the first time we had spoken?
17 A. Yes.
18 Q. After testifying on August of 2004, and with
19 the exception of Mr. Parkerson and
20 Mr. DiNatale, has anyone spoken to you about
21 the events of September 26, 2003 whom you have
22 understood was working for any defendant in any
23 civil lawsuit?
24 A. No.

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1 was the total amount of drinks that you think
2 he might have had at the restaurant; is that
3 right?

4 MR. FARRAH: Objection.

5 A. Correct.

6 Q. Let me ask it a different way. From looking at
7 your statement, can you tell me how many drinks
8 you thought Mr. Southworth maybe had at the
9 restaurant?

10 A. In total?

11 MR. FARRAH: Objection. Are you looking
12 at Exhibit 3?

13 MR. GILLIS: Yes.

14 A. It would be maybe five.

15 Q. Was that everything at the restaurant or just
16 at the table?

17 MR. FARRAH: Objection.

18 A. I believe that was at the restaurant, not at
19 the table.

20 Q. Is it your memory that the beers that were
21 gotten at the bar were brought over to the
22 table?

23 MR. FARRAH: Objection.

24 A. Yes.

1 Q. This is dated November 2, 2003. That's when
2 that was actually done by you, correct?
3 A. Yes.
4 Q. Your memory was a lot fresher back then as to
5 the events of this, correct?
6 A. Yes.
7 Q. You said that you left approximately 11:00, is
8 that correct, the restaurant?
9 A. Yes.
10 Q. Give or take a few minutes?
11 A. Yes.
12 Q. It could have been 10:30; it could have been
13 11:30?
14 MR. FARRAH: Objection.
15 A. It was probably not later. It was probably,
16 you know, 11:00 or before.
17 Q. Subsequently, you were under oath when you gave
18 your grand jury testimony, correct?
19 A. Yes.
20 Q. You said "probably two, maybe a couple of
21 Manhattans" on page 9 of your sworn testimony.
22 A. Correct.
23 Q. At the end of that you were asked, were you
24 not, whether or not Mr. Southworth was

1 Q. You had known him long enough to know whether
2 his demeanor was changing, correct?
3 MR. FARRAH: Objection.
4 A. The only time that I believed that he was drunk
5 was the time that I had seen him at the party.
6 Q. That was not the question. You've known him
7 long enough that you would be able to tell
8 whether or not his demeanor was changing on the
9 night of September 26, 2003, correct?
10 A. Yes.
11 Q. Now, those are the statements that you gave
12 before lawyers got involved in the case,
13 correct?
14 A. Yes.
15 Q. Then you met with Mr. Farrah, correct?
16 MR. FARRAH: Objection.
17 A. Yes.
18 Q. When did you first meet with him?
19 A. It was over a year. I honestly don't know.
20 Q. How many times have you met with Mr. Farrah?
21 A. Only once, besides today.
22 Q. When was that?
23 A. I don't know. It was sometime after the grand
24 jury.

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1 exhibiting any change in his demeanor at any
2 time? Do you remember being asked that?
3 MR. FARRAH: What page is that?
4 MR. GILLIS: Page 34.
5 A. Yes.
6 Q. That was a lot closer to the time of this
7 accident than today, correct?
8 A. Correct.
9 Q. Did they put your statement in as an exhibit
10 when you were at the grand jury?
11 A. Yes.
12 Q. That was the fifth of November of 2003,
13 correct?
14 A. Yes.
15 Q. That was when you said that there was no change
16 at any time in his demeanor while he was at the
17 Longhorn; is that correct?
18 A. Yes.
19 Q. You testified there that you had known him for
20 about a year prior to this accident, correct?
21 A. Yes.
22 Q. Do you know him primarily from dirt bike
23 racing, or how did you know him?
24 A. I knew him from dirt bike racing.

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1 Q. Before your deposition?
2 MR. FARRAH: Are you asking him did we
3 meet before his deposition?
4 MR. GILLIS: Yes.
5 MR. FARRAH: Objection to the form.
6 A. The deposition, was that the grand jury?
7 MR. FARRAH: This is your deposition,
8 right here (pointing to transcript).
9 A. When was this taken? I thought the deposition
10 was when I met with Mr. Farrah.
11 Q. You came in before a situation like this and
12 gave a deposition?
13 A. Yes.
14 Q. Prior to that, had you met with anybody from
15 Mr. Farrah's office?
16 A. No.
17 Q. Then you met with his office, didn't you, to
18 put together an affidavit?
19 A. Yes.
20 Q. Who wrote that up for you?
21 A. I don't know.
22 Q. Who contacted you and asked you to do an
23 affidavit for them? Was that Mr. Farrah's
24 office?

1 A. Yes.
 2 Q. And did they send you that in the mail, or did
 3 you come in to sign it?
 4 A. They sent it to me.
 5 Q. Do you know who from the office you spoke with?
 6 A. No. I presume it was Mr. Farrah.
 7 Q. Was it a male or a female?
 8 A. I don't know.
 9 Q. Do you remember what you spoke about?
 10 A. Just, you know, they were going to send it to
 11 me and I needed to sign it and get it back to
 12 them.
 13 Q. You also testified at trial in this matter,
 14 correct?
 15 A. Correct.
 16 Q. And you were under oath at that time, correct?
 17 A. Correct.
 18 Q. You didn't have any of the lawyers in this room
 19 forming the questions that you were answering,
 20 correct?
 21 A. Correct.
 22 Q. At that trial do you remember testifying that
 23 you had a Sprite and some food at the
 24 restaurant?

1 A. No.
 2 Q. In fact, when you were asked the first time by
 3 Mr. Farrah what signs were exhibited, you said,
 4 "I don't know"; isn't that correct?
 5 MR. FARRAH: Objection.
 6 Q. Page 49, "What did he show? What did he
 7 manifest that makes you say that?" "I don't
 8 know."
 9 That's the first part of your answer,
 10 correct?
 11 A. Yes.
 12 Q. It was not until he suggested to you that he
 13 was sloppier that you said, "A little bit,
 14 yes," correct?
 15 MR. FARRAH: Objection. The record is the
 16 record.
 17 A. Correct.
 18 Q. It was not until he suggested that he was
 19 louder that you said yes, correct?
 20 MR. FARRAH: Objection.
 21 A. Correct.
 22 Q. It was not until he suggested that he was
 23 boisterous that you ever thought about it as a
 24 possibility, correct?

1 A. Yes.
 2 Q. Do you remember testifying that there was
 3 nothing unusual at all that evening at the
 4 Longhorn as to how Mr. Southworth was speaking
 5 or walking?
 6 MR. FARRAH: Objection.
 7 A. Yes.
 8 Q. Do you remember testifying that Mr. Southworth
 9 brought the beer that he got at the bar with
 10 him to the table?
 11 MR. FARRAH: Objection.
 12 A. Yes.
 13 Q. Prior to Mr. Farrah in 2004 suggesting
 14 different signs of inebriation, did you ever
 15 testify anywhere that Mr. Southworth showed any
 16 signs of inebriation that evening?
 17 A. I don't believe so.
 18 Q. You didn't say it to the police, correct?
 19 A. No.
 20 Q. You didn't put it in your statement, did you?
 21 A. No.
 22 Q. You didn't say it at the grand jury, did you?
 23 A. No.
 24 Q. You didn't testify at trial to that, did you?

1 MR. FARRAH: Objection.
 2 A. Correct.
 3 Q. But even then you said he was not boisterous,
 4 correct?
 5 MR. FARRAH: Objection.
 6 A. Correct.
 7 Q. You said his speech was not slurred, correct?
 8 A. Correct.
 9 Q. And when Mr. Farrah asked about his glassy
 10 eyes, you said, "I don't remember specifically
 11 seeing his eyes." Do you remember saying that?
 12 MR. FARRAH: Objection.
 13 A. Yes.
 14 Q. As you sit here today, can you honestly say
 15 whether or not his eyes were glassy that
 16 evening?
 17 MR. FARRAH: Objection.
 18 A. No.
 19 Q. Prior to Mr. Farrah suggesting these things in
 20 the deposition, you've never told anybody that
 21 he had glassy eyes, correct?
 22 MR. FARRAH: Objection.
 23 A. No.
 24 Q. You never told anybody that he was louder than

1 normal, correct?
 2 MR. FARRAH: Objection.
 3 A. No.
 4 Q. You never told anybody that he was sloppier
 5 looking than he usually is, correct?
 6 MR. FARRAH: Objection.
 7 A. No.
 8 Q. Now, I know that you've tried your best at
 9 these various times to give the best answers
 10 that you can, but I want you to think back.
 11 From the time that you gave testimony at
 12 the grand jury saying nothing changed about his
 13 demeanor to the time that you testified at your
 14 deposition with Mr. Farrah back in 2004, did
 15 you learn anything that changed your opinion of
 16 what happened that evening?
 17 MR. FARRAH: Objection.
 18 A. No.
 19 Q. By the way, was anyone from Rare there at that
 20 deposition, do you remember?
 21 A. I don't know.
 22 Q. Now, the first time that you were asked what
 23 Mr. Southworth had to drink that evening, you
 24 said, I believe, that he had a beer; isn't that

1 Q. You didn't have anything to drink at the sand
 2 pit, correct, any alcohol?
 3 A. No.
 4 Q. Mr. Southworth didn't have any alcohol at the
 5 sand pit, correct?
 6 A. No.
 7 Q. In fact, you guys bring jugs of water instead,
 8 correct?
 9 A. Yes.
 10 Q. Now, when Mr. Farrah was asking you these
 11 questions without Rare being at the deposition
 12 a year and a half ago, he asked you whether or
 13 not someone paid the bar tab, correct?
 14 A. Yes.
 15 Q. And you told him back then a year and a half
 16 ago that the bar tab was transferred to the
 17 check, correct?
 18 MR. FARRAH: Objection.
 19 A. Yes.
 20 Q. I'm going to show you testimony on page 35 and
 21 ask you to read that page. Just read it
 22 quickly. Read it to yourself.
 23 (Witness reviews document.)
 24 Q. Is it your memory that the beers that were

1 correct?
 2 A. Yes.
 3 MR. FARRAH: What page are we talking
 4 about?
 5 MR. GILLIS: Page 28.
 6 Q. "What did you see him drink?" "He had a beer,"
 7 correct?
 8 A. Yes.
 9 MR. FARRAH: Objection.
 10 Q. Prior to Mr. Farrah suggesting that he might
 11 have had more at that time, did you ever
 12 testify to anybody that he had more than a beer
 13 at the bar that evening?
 14 MR. FARRAH: Objection.
 15 A. No.
 16 Q. In fact, he didn't even have a full beer at the
 17 bar, did he? He brought it to the table,
 18 correct?
 19 MR. FARRAH: Objection.
 20 A. Correct.
 21 Q. Was the first beer that he got at the bar the
 22 first one he took over to the table?
 23 MR. FARRAH: Objection.
 24 A. As far as I know.

1 gotten at the bar were added on to the check at
 2 the table?
 3 MR. FARRAH: Objection.
 4 A. Yes.
 5 Q. And that's sworn testimony you gave to
 6 Mr. Farrah a year and a half ago, correct?
 7 A. Correct.
 8 Q. That was a year and a half before you met
 9 Mr. DiNatale, correct?
 10 A. Yes.
 11 Q. Do you remember telling Mr. Farrah that
 12 Mr. Southworth ordered a beer with his dinner?
 13 MR. FARRAH: Where are we talking about?
 14 I object.
 15 A. I don't remember the question.
 16 Q. By the way, do you remember telling Mr. Farrah
 17 that you ordered a steak; you were positive
 18 about that?
 19 A. No.
 20 Q. Let me show you the bottom of page 46 and top
 21 of page 47 at your prior deposition. Look at
 22 that.
 23 (Witness reviews document.)
 24 MR. FARRAH: What is the question?

1 Q. Does that refresh your recollection of what you
 2 had to eat that night?
 3 A. Yes.
 4 Q. You said earlier in the deposition that you saw
 5 Mr. Southworth get up and go to the bathroom,
 6 correct?
 7 A. Yes.
 8 Q. Did you observe him walking to and from the
 9 bathroom?
 10 A. Yes.
 11 Q. The bathroom is in the back corner; isn't that
 12 right?
 13 A. Yes.
 14 Q. The hallway leading to the bathroom doesn't
 15 lead to any other part of the restaurant,
 16 correct?
 17 A. Correct.
 18 Q. You can't get to the bar by going to the
 19 bathroom, correct?
 20 A. Yes.
 21 Q. Was he walking fine when you saw him go to the
 22 bathroom?
 23 A. Yes.
 24 Q. Did you see him stagger at all?

1 A. Correct.
 2 Q. Nobody that night at the table said to anyone
 3 else that they thought they were intoxicated,
 4 correct?
 5 MR. FARRAH: Objection.
 6 A. No.
 7 Q. You told that to Mr. Farrah, didn't you, a year
 8 and a half ago?
 9 MR. FARRAH: What page are we talking
 10 about?
 11 MR. GILLIS: 42.
 12 A. No.
 13 Q. That's your memory today, correct?
 14 A. Yes.
 15 Q. Nobody at the table thought that anybody else
 16 was intoxicated, correct?
 17 MR. FARRAH: Objection. That's not what
 18 he testified to. I'm objecting.
 19 A. No.
 20 Q. You told him back then that Jeff was not
 21 particularly loud; isn't that correct?
 22 A. Correct.
 23 Q. Was he any louder than anybody else at the
 24 table?

1 A. No.
 2 Q. Was he unsteady on his feet?
 3 A. No.
 4 Q. Did he show any signs that were other than his
 5 normal self when he went to the bathroom?
 6 A. No.
 7 Q. You testified to Mr. Farrah back in 2004 that
 8 you left just before or just right around
 9 11:00; is that correct?
 10 MR. FARRAH: Objection.
 11 A. Correct.
 12 Q. Is that your memory as to what time you left,
 13 as you sit here today?
 14 A. Yes.
 15 Q. It was not 10:00, correct?
 16 MR. FARRAH: Objection.
 17 A. No.
 18 Q. Do you know whether or not any of the people at
 19 the table that night ate just an appetizer or
 20 an appetizer and a cup of soup as opposed to an
 21 entree?
 22 A. I don't know for certain.
 23 Q. In fact, you can't quite remember what you had,
 24 correct?

1 A. No.
 2 Q. He was not any louder than you, correct?
 3 A. No.
 4 Q. You were not intoxicated, were you?
 5 A. No.
 6 Q. Seven guys in their early twenties, late teens
 7 having dinner on a Friday night, correct?
 8 A. Correct.
 9 Q. Now, do you remember testifying that you were
 10 at Four Points closer to forty minutes rather
 11 than ten or fifteen minutes?
 12 A. Yes.
 13 Q. Now, you've testified various ways. What is
 14 your memory as you sit here today? Do you
 15 remember whether it was thirty-five minutes or
 16 forty minutes or whatever minutes?
 17 MR. FARRAH: Objection.
 18 A. It was probably around half an hour.
 19 Q. Okay. That's your best estimate as you sit
 20 here today, correct?
 21 A. Correct.
 22 Q. Did you see Jeff Southworth go into the room
 23 that you were standing outside of in the hotel?
 24 A. No.

1 Q. He never went in the room?
 2 A. Not that I know of.
 3 Q. Did someone bring the beer out to him, or did
 4 he go into the room to get it?
 5 A. I'm pretty sure somebody brought it out.
 6 Q. People in the room were bringing beers out to
 7 people in the hallway?
 8 MR. FARRAH: Objection.
 9 A. I don't know whether the beer was brought from
 10 the room the two people I didn't know were
 11 staying in or the two bouncers or security that
 12 we were talking to.
 13 Q. Somebody was supplying beer to you people if
 14 you wanted it at the hotel, correct?
 15 A. Yes.
 16 Q. And you were able to get it for the half hour
 17 that you were there at the hotel if you wanted
 18 it, correct?
 19 A. Yes.
 20 Q. And nobody was limiting anybody as to the
 21 number of beers they had in the hotel, correct?
 22 A. Correct.
 23 Q. Nobody said, "Look, we only have enough for
 24 everybody to have one," or "You're limited to

1 A. An estimate or a guesstimate.
 2 Q. Is it fair to say that you were guessing at
 3 that point?
 4 MR. FARRAH: Objection.
 5 A. I don't think I was guessing. I think I was
 6 thinking that there was more a possibility that
 7 he had had more.
 8 Q. So when you said "maybe four," that's a
 9 possibility, not an accurate statement as to
 10 what you know him to have drunk at the table
 11 that day, correct?
 12 MR. FARRAH: Objection.
 13 A. Yes.
 14 Q. In fact, six weeks after the accident you told
 15 the state police that he had maybe two,
 16 correct?
 17 MR. FARRAH: Objection.
 18 A. Correct.
 19 Q. Was it your understanding that you were at the
 20 Longhorn close to two hours that evening?
 21 MR. FARRAH: Objection.
 22 A. Yes.
 23 Q. Do you remember exactly how long you were at
 24 the apartment complex that night before you

1 one beer," correct?
 2 A. Yes.
 3 Q. Do you know what type of beer it was?
 4 A. I don't.
 5 Q. Do you know how big the cooler was in the back
 6 of Mr. Southworth's car?
 7 A. No.
 8 Q. Did you see the cooler?
 9 A. No.
 10 Q. Were you aware that he had a cooler in the back
 11 seat?
 12 A. No.
 13 Q. You don't remember what the bartender looked
 14 like, correct?
 15 A. Not specifically.
 16 Q. She didn't appear to be a friend of Scott's or
 17 Jeff's, did she?
 18 A. No.
 19 Q. I know you were trying to answer the best you
 20 could in the first deposition, but when you
 21 answered "maybe" to these questions on page 38,
 22 was that an accurate statement or was that a
 23 guesstimate on your part?
 24 MR. FARRAH: Objection.

1 left?
 2 A. Not exactly.
 3 Q. What is your best estimate?
 4 MR. FARRAH: Objection.
 5 A. At least twenty-five minutes, at the most
 6 thirty-five minutes.
 7 Q. How long did it take you to get from the
 8 apartment complex to the scene of the accident?
 9 A. Like close to ten minutes.
 10 Q. The dogs were in the car for the whole time you
 11 were in the restaurant?
 12 A. Yes.
 13 Q. They were sitting there for about two hours,
 14 correct?
 15 A. Yes.
 16 Q. Did he let the dogs out of the car when you
 17 went to the truck?
 18 MR. FARRAH: Objection.
 19 A. I don't remember.
 20 Q. Did he rile the dogs up at any point when he
 21 came out of the restaurant?
 22 MR. FARRAH: Objection.
 23 A. No.
 24 MR. GILLIS: What is the nature of your

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1 objection?

2 MR. FARRAH: "Riled the dogs up," form of
3 the question.4 Q. You testified earlier that the one time you
5 thought he was intoxicated he riled up the dogs
6 at a party, correct?

7 MR. FARRAH: Objection.

8 A. Yes.

9 Q. He didn't exhibit any of that behavior when you
10 left the Longhorn on the night of September 26,
11 2003, did he?

12 A. No.

13 Q. When the police asked you, you didn't tell them
14 that you thought Mr. Southworth was intoxicated
15 that evening, did you?

16 A. No.

17 Q. When you were under testimony at the grand
18 jury, you never said that Mr. Southworth was
19 intoxicated that evening, did you?

20 A. No.

21 Q. In fact, when you left there that night, you
22 didn't believe him to be intoxicated, did you?

23 A. No.

24 Q. After you left the Longhorn that evening, you

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1 A. I'm pretty sure that he had a beer at the
2 hotel.3 Q. At the restaurant did they drink about the same
4 amount?

5 MR. FARRAH: Objection.

6 A. Correct.

7 Q. Did he show any signs of intoxication?

8 A. No.

9 Q. At any time at the restaurant do you remember
10 anybody at the table showing any signs of
11 intoxication?

12 A. No.

13 Q. After you left the restaurant and after there
14 was drinking at the hotel, did you see a change
15 in Mr. Southworth's demeanor after that point?

16 A. No.

17 Q. Did he seem intoxicated when he was getting in
18 his vehicle later on that evening?

19 A. No.

20 Q. Do you have any independent memory, not from
21 looking at documents today or anything else,
22 but your memory of the night of the accident?23 Do you have a memory of there being any extra
24 drinks on the table?

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1 first went to the hotel for a while, correct?

2 A. Yes.

3 Q. There was drinking in the hallway, correct?

4 A. Yes.

5 Q. Then you went to the strip bar, correct?

6 MR. FARRAH: Objection.

7 A. Yes.

8 Q. You left the strip bar without going into it
9 and went to the apartment complex, correct?

10 A. Correct.

11 Q. That was about a thirty-minute ride from the
12 Other Side to the apartment complex, correct?

13 MR. FARRAH: Objection.

14 A. Correct.

15 Q. Could it be a little less than that, do you
16 know?

17 MR. FARRAH: Objection.

18 A. If you were driving fast.

19 Q. Who was driving from the time you left the
20 Longhorn until the time that you arrived at the
21 apartment complex?

22 A. Scott.

23 Q. Did Scott have any more to drink that evening,
24 that you know of, than Mr. Southworth?

1 MR. FARRAH: Objection.

2 A. You mean just drinks that had been ordered and
3 not drinking?

4 Q. Yes.

5 A. No.

6 Q. When you say "checked out from the bar," did
7 you mean by that that you were just leaving the
8 bar to go to the table?

9 MR. FARRAH: Objection.

10 A. Yes.

11 Q. You didn't mean "cash out," correct?

12 MR. FARRAH: Objection.

13 A. No.

14 Q. If you had paid at the bar, you would have
15 said, "We paid the tab and went to the table,"
16 correct?

17 MR. FARRAH: Objection.

18 A. Yes.

19 Q. You answered several times today to questions
20 that you don't remember.21 When you answer a question "I don't
22 remember" does that mean something didn't
23 happen or you just don't remember whether or
24 not it happened or didn't happen?

		Page 169	Page 171
1	MR. FARRAH: Objection.	1	REDIRECT EXAMINATION
2	A. I just don't remember whether it happened or	2	
3	didn't happen.	3	BY MR. FARRAH:
4	Q. When you answered questions previously "I don't	4	Q. Is it accurate to say that as of September 26,
5	remember," that is not to say whatever was	5	2003 Jeff was your friend?
6	being talked about didn't happen. You just	6	A. Yes.
7	don't remember whether it did or didn't,	7	Q. And is it accurate to say that throughout this
8	correct?	8	process of speaking to different people about
9	MR. FARRAH: Objection.	9	the events of September 26, 2003 you have felt
10	A. Correct.	10	uncomfortable about talking about Jeff, your
11	Q. Is it fair to say when the drinks came to the	11	friend?
12	table, they came one drink per person at a	12	MR. GILLIS: Objection.
13	time?	13	A. No.
14	MR. FARRAH: Objection.	14	Q. Is it accurate to say that you didn't want to
15	A. I think so but --	15	hurt Jeff as part of this process of speaking
16	Q. I want your memory. Tell me your memory.	16	to people about the events of September 26,
17	MR. FARRAH: Let him answer. He was	17	2003?
18	trying to.	18	MR. GILLIS: Objection.
19	A. I remember the round being ordered, but	19	A. Well, not really because to be honest with you,
20	according to the bill, there were seven drinks	20	whatever happened that night and what will or
21	brought to the table.	21	has happened, I think regardless of who it is,
22	Q. That's why I'm asking for your memory. I know	22	they deserve whatever happens to them.
23	what the bill says.	23	Q. Do you think Jeff deserves the punishment that
24	Your memory, as you sit here today, do you	24	he got in the criminal case?
		Page 170	Page 172
1	have a specific memory of seeing anybody with	1	A. I don't know exactly what he got.
2	more than one drink per round?	2	Q. He was found guilty.
3	A. No.	3	A. I know he was guilty. I don't know what his
4	Q. Did you see any of the managers walking around	4	sentencing was. I agree that he should serve
5	there that night while you were at the	5	time.
6	Longhorn?	6	Q. Do you think it was appropriate that Jeff be
7	A. I don't remember seeing any managers.	7	found guilty of driving under the influence?
8	Q. Meaning you don't remember if they did or	8	MR. GILLIS: Objection.
9	didn't walk around?	9	A. No. Well, what is driving under the influence?
10	A. Correct.	10	Like having alcohol in your system and driving?
11	Q. Had you been to the Longhorn prior to this	11	Then yes.
12	date?	12	Q. Because he had alcohol in his system and he was
13	A. I had been there once before.	13	driving that night, wasn't he?
14	Q. How long prior to this accident was that?	14	A. Yes.
15	A. It was probably a while, maybe a year before	15	Q. Throughout this process, have you tried to help
16	then.	16	Jeff as best you can?
17	Q. Those are the only two times you have been to	17	MR. GILLIS: Objection.
18	the Longhorn?	18	A. No.
19	A. Yes.	19	MR. FARRAH: Okay. I'm done. Thank you.
20	MR. GILLIS: I don't have any further	20	
21	questions.	21	RECROSS-EXAMINATION
22		22	
23		23	BY MR. GILLIS:
24		24	Q. Have you spoken with Jeff since the accident?

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1	A. No.	any change in his demeanor that night while he
2	Q. So whatever friendship you had, you have not	was at the Longhorn that would indicate to you
3	spoken with him in the last two-and-a-half	that he was under the influence, correct?
4	years, correct?	MR. FARRAH: Objection.
5	A. Correct.	A. No.
6	Q. Even if he were a closer friend than he was,	Q. So in fact, in your opinion as you stated today
7	you would not lie to the grand jury, would you?	under oath, he was not under the influence of
8	MR. FARRAH: Objection.	alcohol that you could tell when he was at the
9	A. No.	Longhorn that evening, correct?
10	Q. Would you lie at trial to benefit Jeff?	MR. FARRAH: Objection.
11	MR. FARRAH: Objection.	A. I guess. Referring to the last question, what
12	A. No.	exactly is "under the influence"?
13	Q. Would you lie under oath at your deposition?	Q. Let's go back to this. When you signed this
14	A. No.	document that Mr. Farrah prepared for you where
15	Q. Would you lie on your affidavit to benefit	he wrote on your behalf that Mr. Southworth
16	Jeff?	seemed to be under the influence of alcohol,
17	A. No.	what did you think "under the influence of
18	Q. By the way, the affidavit, Paragraph 6, that	alcohol" meant?
19	Mr. Farrah talked about states that you	MR. FARRAH: Objection.
20	testified at your deposition to certain things,	A. I can say that I don't think he was drunk. I
21	correct?	mean, he was under the influence in respect
22	A. Correct.	that he had been drinking alcohol.
23	Q. We have gone through a lot of those things to	Q. So when you agreed to sign for Mr. Farrah this
24	specify them, correct?	statement, your understanding of what
	Page 174	Page 176
1	A. Correct.	Mr. Farrah wrote for you was being under the
2	Q. It says here, "Everyone at the table was loud."	influence of alcohol was the fact that you had
3	As you've testified, Mr. Southworth was not any	alcohol in your system, correct?
4	more particularly loud than anybody else,	MR. FARRAH: Objection.
5	correct?	A. Correct.
6	A. Correct.	Q. It didn't mean that he was drunk, correct?
7	Q. You can't remember whether it was a waitress or	MR. FARRAH: Objection.
8	a manager who came over to you, correct?	A. Yes.
9	A. Correct.	Q. And, in fact, while at the Longhorn, no slurred
10	Q. That was twenty to twenty-five minutes before	speech, correct?
11	you left the restaurant, correct?	A. Correct.
12	MR. FARRAH: Objection.	Q. He was steady on his feet going to the
13	A. Yes.	bathroom, correct?
14	Q. Prior to that time nobody that you're aware of	A. Correct.
15	complained of any of the behavior at the table,	Q. No slurring at the table, correct?
16	correct?	A. Correct.
17	MR. FARRAH: Objection.	Q. No louder than anyone else at the table,
18	A. Correct.	correct?
19	Q. Nobody had to come to the table and tell you	A. Correct.
20	guys to be knock something off or quiet down,	Q. You don't have a specific memory of any glassy
21	correct?	eyes, correct?
22	A. Yes.	MR. FARRAH: Objection.
23	Q. When you said in your deposition you testified	A. Correct.
24	to certain things on 49 to 51. You didn't see	MR. GILLIS: I have no further questions.

1 MR. FARRAH: I think I've asked you
2 everything I need to ask you. Thanks a lot.
3 MR. GILLIS: You're done.

(Whereupon, the deposition was concluded at 3:05 p.m.)

1 CERTIFICATE
2 COMMONWEALTH OF MASSACHUSETTS
3 COUNTY OF MIDDLESEX, SS

I, BARBARA J. SIMON, a Professional
5 Shorthand Court Reporter and Notary Public in
6 and for the Commonwealth of Massachusetts, do
7 hereby certify that the foregoing deposition of
8 Jude Connelly, was taken before me on Friday,
9 February 10, 2006. The said witness was
10 satisfactorily identified and duly sworn before
the commencement of his testimony; that the
said testimony was taken stenographically by
myself and then transcribed by myself. To the
best of my knowledge, the within transcript is
a complete, true and accurate record of said
deposition.

11 I am not connected by blood or marriage
12 with any of the said parties, nor interested
13 directly or indirectly in the matter in
controversy.

14 In witness whereof, I have hereunto set my
15 hand this 20th day of February, 2006.

Barbara J. Simon, Notary Public
My Commission Expires:
November 6, 2009

SIGNATURE PAGE/ERRATA SHEET

Page 178

RE: Nancy Rosario, Individually, as she is the
Administrator of the Estate of Awilda
Santiago, Essex Probate Court Docket
#03P-2494AD1, P/P/A Veronica Rosario and
Christina Santiago, and as she is the
Administrator of the Estate
of Jose Santiago, Berlin (Connecticut)
Probate Court, Case #03-0713 v. Rare
Hospitality International, Inc. d/b/a
Longhorn Steakhouse

February 10, 2006
Deposition of Jude Connelly

I, JUDE CONNELLY, do hereby certify that I have read the foregoing transcript of my testimony and further certify that it is a true and accurate record of my testimony (with the exception of the following changes listed below):

Page Line Correction

Signed under the pains and penalties of

perjury this _____ day of

_____ , 2006.

Jude Connelly

LIGH Ann Chabot.

12-17-80

SS#034-18-9882

57 Fourth St

3rd floor

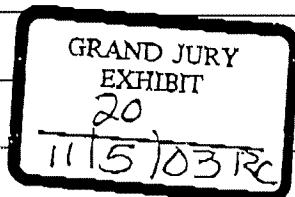
Room #111453

(978)-840-2810

There were about 8 men. They all had chicken & bread. Then they had salads, most had steaks or ribs. They were drinking Manhattan's or Beck light draft. He had 3 ~~Beck light~~ Manhattan's.

LIGH Chabot
Nov 2, 03

8:45pm



THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY, AS)
SHE IS THE ADMINISTRATRIX OF THE)
ESTATE OF AWILDA SANTIAGO, ESSEX)
PROBATE COURT DOCKET #03P-2499ADI)
P/P/A VERONICA ROSARIO AND)
CHRISTINA SANTIAGO, AND AS SHE IS)
THE ADMINISTRATRIX OF THE ESTATE) Civil Action Number:
OF JOSE SANTIAGO, BERLIN) 05 CV 1061MLW
(CONNECTICUT) PROBATE COURT,)
CASE #03-0713,)
Plaintiff(s),)
vs.)
RARE HOSPITALITY INTERNATIONAL,)
INC., d/b/a LONGHORN STEAKHOUSE,)
Defendant.)

VIDEO DEPOSITION OF:

LEIGH CHABOT

* * * * *

SCHEDULED TO BE TAKEN ON:

March 10, 2006

Beginning at 10:00 A.M.

* * * * *

Starkings Court Reporting & Video Services
302 Mason Street, Post Office Box 1345
Telephone (910) 323-4232 or 1-800-328-3747

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Please Note: Proper nouns MAY BE spelled
phonetically. No exhibits were presented to the
reporter to attached to the transcript.

APPEARANCES:

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Starkings Court Reporting & Video Services

(Whereupon,
LEIGH CHABOT
was called as a witness, duly sworn to tell
the truth, and testified under oath as follows:)
(10:11 A.M.)

EXAMINATION BY MR. FARRAH:

Q. Good morning, Ms. Chabot. My name is Albert Farrah and I represent the Plaintiff in this action. How do you do?

A. Good.

Q. Could you tell us your full name for the record, please?

A. Lee Ann Blackington Chabot, maiden name Blackington?

Q. How old are you?

A. Twenty-five.

Q. And are you married?

A. Yes.

Q. Where do you live?

A. Fayetteville, North Carolina.

Q. Do you have any children?

A. Yes, three.

Q. Could you briefly tell me what your schooling experience is?

A. I attended high school through 11th grade at

1 Paradise Village Hills Phoenix, Arizona. Later I
2 obtained my GED and served -- did one year at Mount
3 Monchuset (phonetic) Community College which ended in
4 2004.

5 Q. Your age again is?

6 A. Twenty-five.

7 Q. Date of birth is what?

8 A. December 17, 1980.

9 Q. Can you tell me what experience you have
10 working in restaurants?

11 A. I began working at J&B's Bar and Grill in
12 Townsend, Massachusetts in about May of 1998. I
13 hostess'd there for about six months. After that I
14 waitressed for the following time I was there, which was
15 about three years. And then I moved on to Longhorn
16 sometime late 2000 and worked there until April 12, 2004,
17 which then I left when I joined the military.

18 Q. You joined the military in 2004, is that
19 right?

20 A. Yes, sir.

21 Q. Were you in the Reserves prior to that time?

22 A. No, sir.

23 Q. When you worked at JMB's, is that the name of
24 it with an M in the middle?

25 A. No, an "E" sign, J&B's.

1 Q. Can you tell me approximately how long before
2 September 26, 2003 it was?

3 A. Approximately, I would say at least four
4 months.

5 Q. And can you tell me with what frequency, that
6 is how many times between that first sighting of him, for
7 lack of a better way to describe it, four months before
8 September 26, 2003, and September 26, 2003, you saw him
9 at the restaurant.

10 A. His frequency I would say approximately would
11 be once a week.

12 Q. Can you describe him to me as he appeared to
13 you back then?

14 A. Back then he was, from what I remember, over
15 six foot, six two, well over 200 pounds. I would say
16 220.

17 Q. What kind of hair cut did he have during that
18 period?

19 A. He had a buzz cut.

20 Q. Buzz cut?

21 A. Yeah.

22 Q. Pretty distinctive looking fellow?

23 A. I wouldn't pick him out from a crowd. He had
24 a thicker build. He wasn't fat. A thicker kind of kid.
25 But he would not stand out to me in a crowd, no.

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1 Q. Do you have a memory during that four-month
2 period before September 26, 2003 of having waited on him
3 yourself?

4 A. I may have waited on him one time maybe.

5 Q. Do you know any of the other waitresses at
6 the Longhorn who waited on him during that four month
7 period before September 26, 2003?

8 A. Yes.

9 Q. Who? Who else waited on him during that
10 period?

11 A. Mary Clare did and Sherry did.

12 Q. Mary Clare Fitzgerald?

13 A. I believe, yes.

14 Q. And Sherry?

15 A. Samon.

16 Q. How do you know Sherry Samon waited on him
17 before September 26, 2003?

18 A. Just from memory. I have been friends with
19 Sherry, and from the restaurant seeing him in there, I
20 had known Sherry to wait on him. Usually Sherry and I
21 always work the same shifts.

22 Q. Did you ever, after you realized that there
23 was this accident of September 27 in the early morning of
24 2003, did you speak to Sherry about this gentleman, Mr.
25 Southworth?

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27

28

1 A. I spoke to Sherry the following day.

2 Q. Tell me what you said to her and what she
3 said to you during that conversation?

4 A. It was -- I basically told Sherry that I had
5 seen him on the news and that he was involved in a fatal
6 accident. And she said, are you sure it was him? I
7 said, Yeah, I'm pretty sure, his picture was up there.
8 And she said, did they say a name. And I said no. And
9 that was about it. She said no, it couldn't have been
10 him.

11 Q. Why did she say no it couldn't have been him?

12 A. Probably too much of a coincidence, you don't
13 think anyone you'd know would be on the news.

14 Q. During that conversation did Sherry say to
15 you that she had waited on him before?

16 A. Yes. They're her regulars.

17 Q. He was one of her regulars; is that right?

18 A. Yes, sir.

19 Q. What do you mean by a regular?

20 A. Someone who you wait on when they normally
21 come in. You would know that was your customer and they
22 may even ask for you instead of even sitting with someone
23 else.

24 Q. Did customers have that ability to ask for a
25 particular waitress, I mean, if the restaurant level of

1 business allowed it?

2 A. Absolutely.

3 MR. GILLIS: Objection.

4 Q. What made you understand that Mr. Southworth
5 was Sherry's customer?

6 A. Normally when he came in from the shifts I
7 was on, and that I saw him in the restaurant, Sherry was
8 waiting on him.

9 Q. Did you ever hear him ask for Sherry?

10 A. No, I never heard him ask.

11 Q. Did you ever hear Sherry talk about him
12 during the period prior to September 26, 2003?

13 A. Yes.

14 Q. What sort of things did she say about him?

15 A. She just, you know, she never mentioned him
16 by name, but if she came to the computer and we were
17 sitting there chatting, she would go oh, yeah, those kids
18 are so funny. Or maybe tell me something they were
19 talking about at the table. She mentioned frequently how
20 they'd always come in after dirt biking. And that was
21 their ritual. They would go out dirt biking for the day
22 and then come in for dinner.

23 Q. Can you tell me how many times Sherry waited
24 on Mr. Southworth during that four-month period?

25 MR. GILLIS: Objection.

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1 (DEPOSITION EXHIBIT #10 WAS MARKED
2 FOR IDENTIFICATION.)

3 Q. Do you recognize Exhibit #10 as depicting a
4 portion of the service bar at the Leominster Longhorn as
5 it appeared on September 26, 2003?

6 A. I don't remember the corkboard being there.

7 Q. Okay. Other than that does it look like a
8 portion of the service bar?

9 A. Yes.

10 Q. I am going to show you a photograph and ask
11 you if it fairly and accurately depicts a portion of the
12 Leominster Longhorn as it appeared on September 26, 2003?

13 A. Yes.

14 Q. What portion does that show?

15 A. It shows the back alley where we receive our
16 food, the dish pit, and a small portion of the left side
17 where we make our drinks and put bread in.

18 MR. FARAH: Could we have that marked as
19 the next exhibit.

20 (DEPOSITION EXHIBIT #11 WAS MARKED

21 FOR IDENTIFICATION.)

22 MR. GILLIS: When are we going to get copies
23 of these? I believe you said we were going to get the
24 video and all the photographs that you took.

25 MR. FARAH: Did you get an e-mail -- can we

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51

1 Q. Did he have any beers that you recall at the
2 table?

3 A. Not that I recall.

4 Q. Do you know who had the beers at the table?

5 A. I know that I served a beer to a gentleman
6 who was in a black hat with black hair.

7 Q. And you served another beer to that table
8 during that night; isn't that right?

9 A. Yes, sir.

10 Q. Who did you serve that too?

11 A. I don't recall specifically, sir.

12 Q. So the two beers that appear on the first
13 page of Exhibit #8, two 25 ounce Bud Light beers were
14 served by you to the table the night of September 26,
15 2003; is that right?

16 A. Yes, sir.

17 Q. Nobody from the bar, no bartender that night
18 asked you to add to your check any beers that had been
19 ordered by your table patrons while they had been at the
20 bar that night; is that right?

21 A. Correct.

22 Q. And the state trooper was the only police
23 officer you ever spoke to about this incident?

24 A. Yes, sir.

25 Q. Did you ever speak to Chuck Bulgain about

1 go off the record.

2 (Off the record.)

3 (Back on the record as follows:)

4 BY MR. FARAH:

5 Q. Could you show us where you get the food?

6 A. (Indicating while testifying.) Right here we
7 get the main entrees. Up here is where we get appetizers
8 and we pull our salads from there.

9 Q. All right. Did you testify before the Grand
10 Jury?

11 A. No, sir.

12 Q. Did you speak to any other police after that
13 meeting with the police at the Longhorn on November 2,
14 2003? ■

15 A. No, sir.

16 Q. In Exhibit #7 you wrote among other things --
17 well, you wrote there were about eight men. They all had
18 chowder and bread. Then they had salads. Most had
19 steaks or ribs. They were drinking Manhattans or Bud
20 Light draft. They had three Manhattans. Do you see
21 that?

22 A. Yes, sir.

23 Q. And the he you are referring to there is Mr.
24 Southworth; is that right?

25 A. Yes, sir.

Starkings Court Reporting & Video Services

52

1 this incident?

2 A. Not that I recall, no.

3 Q. David -- not David Orr -- what's his first
4 name?

5 A. Chris. ■

6 Q. Chris Orr and you spoke about it that day, is
7 that right?

8 A. Yes, sir.

9 Q. Tell me everything you said to Chris and
10 Chris said to you that day about Southworth and what
11 happened that night?

12 A. Chris asked me after speaking with the state
13 trooper, Chris basically knew exactly what had happened,
14 and so I spoke with Chris later that evening. He told me
15 what the trooper had told him regarding that there was an
16 accident he was involved in. That he had killed two
17 people and that they were backtracking his story for the
18 night. And from what Chris was told from the trooper,
19 the only thing Chris knew is that they had stopped at, I
20 guess a strip club after Longhorn. And Chris asked me do
21 I feel that they left here they were fine, that they were
22 not over served. And I told him I believed they did.
23 They left the restaurant fine.

24 Q. Have you told everything you recall about
25 talking to Chris about that night? ■

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	61		63
1	Q. I'm sorry. You believe you called	1	A. Because I don't -- I wasn't keeping
2	Todd?	2	track of how much he was drinking.
3	A. Yup.	3	Q. So you don't know whether he had one
4	Q. Where were they?	4	beer or three beers while he was sitting at the
5	A. Um, I think they were at the Four	5	bar; is that right?
6	Points.	6	A. Yeah.
7	Q. Okay. Where were you when you called	7	Q. Who paid for whatever you drank?
8	Todd?	8	A. I paid for whatever I had.
9	A. At the LongHorn.	9	Q. And Jeff paid for whatever he had; is
10	Q. Sitting at the bar?	10	that right?
11	A. I believe so.	11	A. Yes.
12	Q. And how much later was it that they	12	Q. You weren't really watching Jeff to
13	showed up at the LongHorn?	13	see how much he was drinking; is that right?
14	A. I don't know. I think it was right	14	A. Nope.
15	as we got our table, so I don't know.	15	Q. What were you doing while you were at
16	Q. How long did you wait for a table	16	the bar?
17	from when you got there until you were seated?	17	A. Probably watching the Red Sox game.
18	A. I think half an hour, somewhere	18	Q. Did Jeff have any Manhattans while he
19	around there. I don't know.	19	was at the bar?
20	Q. You were at the bar?	20	A. No.
21	A. Yup.	21	Q. Are you sure?
22	Q. With Jeff and Jude; is that right?	22	A. No, but...
23	A. Yeah. Well, Jude was waiting for the	23	Q. But what?
24	table with us.	24	A. I -- I'm not sure either way.

	62		64
1	Q. Jude was at the bar?	1	Q. Okay. The Bud Light that you had was
2	A. He wasn't sitting at the bar.	2	a draft; is that right?
3	Q. Was he standing at the bar?	3	A. Yup.
4	A. Yeah.	4	Q. 24-ounce?
5	Q. You were sitting at the bar?	5	A. Yup.
6	A. I believe so, yes.	6	Q. Is that right?
7	Q. With Jeff?	7	A. Yup.
8	A. Yup.	8	Q. How many did you have?
9	Q. Can you tell me where at the bar you	9	A. One, I believe.
10	were sitting with Jeff and --	10	Q. Maybe two?
11	A. I don't know.	11	A. No, I don't think so.
12	Q. How much did you have to drink at the	12	Q. And the Bud Light that you saw Jeff
13	bar?	13	order when you came in was a 24-ounce; is that
14	A. I think just a beer.	14	right?
15	Q. Okay. You had just a beer?	15	A. Yes.
16	A. I believe so, yeah.	16	Q. Is that typically what the two of you
17	Q. What kind of beer?	17	would have when you went to the LongHorn
18	A. Bud Light probably.	18	Steakhouse, the 24-ounce Bud Light?
19	Q. Okay. And how much did Jeff have to	19	A. Sometimes.
20	drink at the bar?	20	Q. Did you ever order a 12-ounce Bud
21	A. I don't know. A beer.	21	Light while you were there?
22	Q. More?	22	A. I believe so.
23	A. I don't know.	23	Q. Does dirt-biking make you thirsty?
24	Q. Why don't you know?	24	A. Well, it's -- I mean, it's a

1 INDEX

2

3 WITNESS: DIRECT CROSS REDIRECT

4 MICHAEL J. ESPY

5

6 By Mr. Farrah 4 40

7 By Mr. Lane 37

8

9

10

11 EXHIBITS

12

13 NO. DESCRIPTION PAGE

14 (None)

15

16

17

18

19

20

21

22

23

24

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19 On Behalf of the Defendant

20 Enterprise Rent-a-Car of Boston

	25	27
1	they? Manhattans.	1 A. I don't think so.
2	Q. Do you remember how many beers and	2 Q. Okay. Do you have a memory of having
3	how many Manhattans you had?	3 told the police that?
4	A. I don't know for sure.	4 A. No.
5	Q. What did Jeff Southworth have to	5 Q. So you really can't remember what
6	drink?	6 happened?
7	A. I honestly don't know.	7 A. No. I was drunk.
8	Q. Whose idea was it to order	8 Q. Did you testify before the grand
9	Manhattans?	9 jury?
10	A. I don't know. Might have been mine.	10 A. No.
11	I don't really know.	11 Q. Have you talked to anybody who was in
12	Q. Was Todd drinking with Matt and -- I	12 your party the night of September 26, 2003,
13	forget the other fellow's name.	13 about what happened at the restaurant?
14	A. Bruce.	14 A. Um, not really specific details or
15	Q. -- Bruce at the hotel?	15 anything like that.
16	A. He probably had a beer.	16 Q. Have you talked to Jude Connelly
17	Q. Where does Todd live?	17 about what happened that night?
18	A. Harvard, Mass.	18 A. No.
19	Q. Do you know the street?	19 Q. Do you know where you were sitting at
20	A. 16 Westcott.	20 the LongHorn Steakhouse that night?
21	Q. Todd is someone you've known for a	21 A. No.
22	long time?	22 Q. Do you know if --
23	A. Yes.	23 A. Actually, I remember my back was to
24	Q. Was Jeff Southworth exhibiting signs	24 the bathroom.
	26	28
1	of intoxication to you that night at the	1 Q. Okay. How many times have you been
2	restaurant?	2 in the LongHorn Steakhouse?
3	A. Not that I can recall. I was drunk	3 A. Probably two, at the most three
4	myself, so I don't -- I wasn't really paying	4 times.
5	attention to him.	5 Q. I'm going to show you what's been
6	Q. Did you drive or did Todd drive?	6 marked as Exhibit 1 in your brother's
7	A. I didn't drive.	7 deposition. I'm going to ask you whether --
8	Q. So it must have been Todd?	8 and this is a document I got from the
9	A. Yup.	9 Leominster Licensing Board.
10	Q. Did you speak to the police after the	10 A. Mm-hmm.
11	accident?	11 Q. I'm going to ask you whether or not
12	A. They came to my house, the State	12 this document fairly and accurately depicts the
13	Police, a younger State Police officer. And I	13 layout of at least some of the features of the
14	gave a statement.	14 LongHorn Steakhouse as it appeared to you that
15	Q. You gave a statement?	15 night.
16	A. Yup.	16 A. This would be the bar, right?
17	Q. Do you have that statement?	17 Q. That's the bar.
18	A. No.	18 A. Then this would be the entrance.
19	Q. Do you have it at your house?	19 Q. That's the entrance, so --
20	A. No. My parents might. I don't have	20 A. So, yes.
21	a copy of it.	21 Q. Your memory is that your back was to
22	Q. Did you tell the police that at the	22 the rest room?
23	restaurant Jeff Southworth personally consumed	23 A. Yes.
24	at last three of the Manhattans and two beers?	24 Q. Were you sitting in a booth or table?

Volume: II
Pages: 1-119
Exhibits: None

3 UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

5 *****
6 NANCY ROSARIO, INDIVIDUALLY, AS SHE IS *
7 THE ADMINISTRATRIX OF THE ESTATE OF *
8 AWILDA SANTIAGO, ESSEX PROBATE COURT *
9 #03P-2499AD1, P/P/A VERONICA ROSARIO *
AND CHRISTINA SANTIAGO, AND AS SHE IS *
THE ADMINISTRATRIX OF THE ESTATE OF *
JOSE SANTIAGO, BERLIN (CONNECTICUT) *
PROBATE COURT, CASE #03-0713 *
Plaintiff *

VS * Civil Action No
11 * 05-CV-10617MLW
RARE HOSPITALITY INTERNATIONAL, INC. *
12 d/b/a LONGHORN STEAKHOUSE, *
Defendant *
13 *****

14 DEPOSITION OF KRISTIN O'DONNELL, a witness
15 called on behalf of the Plaintiff, taken pursuant to
16 Notice under the applicable provisions of the Federal
17 Rules of Civil Procedure, before Barbara J. Simon, a
18 Professional Shorthand Reporter and Notary Public, in
19 and for the Commonwealth of Massachusetts, at the law
20 offices of Albert L. Farrah, Jr., One Washington
21 Mall, Boston, Massachusetts, on Wednesday, December
22 28, 2005, commencing at 11:05 a.m.

Page

1 I N D E X
2 WITNESS DIRECT CROSS REDIRECT RECROSS
3 KRISTIN O'DONNELL
4 (By Mr. Farrah) 4
5
6 E X H I B I T S
7 There are no exhibits.
8
9
10
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18
19
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21
22
23
24

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Page 2

Page 1

P R O C E E D I N G S

KRISTIN O'DONNELL, having been previously satisfactorily identified and duly sworn, on oath, deposes and says as follows:

DIRECT EXAMINATION

BY MR. FARAH:

Q. You're still under oath. If I cover old ground, it's not because I mean to. I'm going to try to move forward.

Let me start by asking you, on the evening of September 26, 2003, do you recall having a conversation with Leigh Chabot about the Jack Daniels Manhattans that she had ordered from you?

A. Yes.

Q. And did you ask Leigh about that table?

A. Yes.

Q. What did you ask her about the table?

A. I just wanted to make sure that they were eating dinners.

Q. Did you say to her, in effect, "Are these people eating food?"

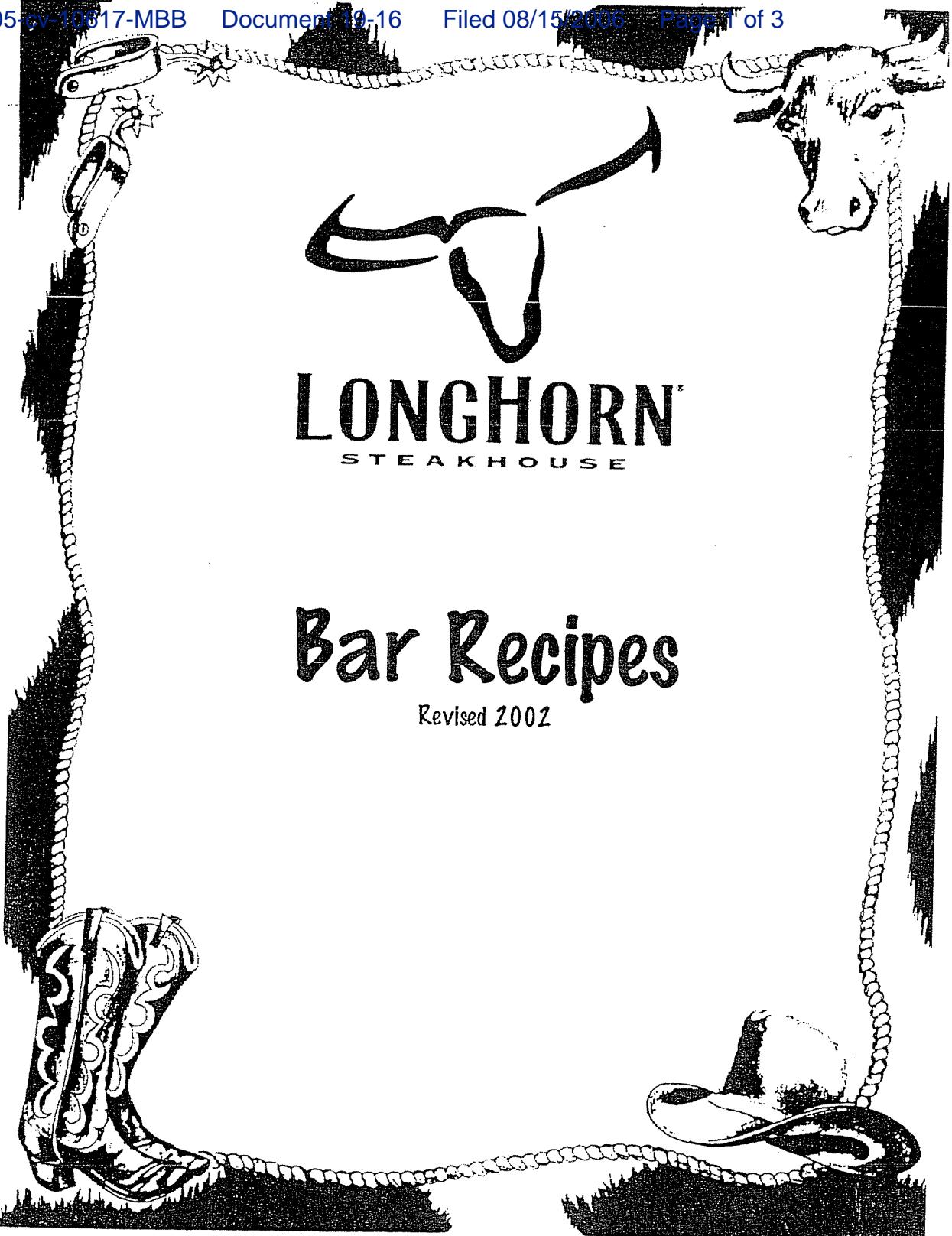
A. Yes.

		Page 29	Page 31
1	(Court reporter reads back question.)		
2	MR. GILLIS: I object.		1 it up so the customers think they're getting more.
3	A. No.		2 Q. Can we agree that the drink-making techniques portion
4	Q. The Jack Daniels Manhattans that you made for Leigh		3 of Exhibit 4 to your deposition on page 298 requires
5	Chabot that night, were they straight up, or on the		4 that all drinks be one-quarter inch from the lip of
6	rocks, or don't you know?		5 the glass?
7	A. Straight up.		6 A. Yes.
8	Q. And you have a memory of that; is that right?		7 Q. Is that what you did?
9	A. Yes.		8 A. Once the cherry goes in it, it brings it up to about
10	Q. And you free-poured those; isn't that right?		9 a quarter inch.
11	A. Correct.		10 Q. And you put one cherry in each glass of the Jack
12	Q. Did you follow Longhorn's procedure with respect to,		11 Daniels Manhattans; is that right?
13	first, the vessel into which the drinks were served		12 A. Yes.
14	to the patrons?		13 Q. Describe for me how you filled the first order for
15	A. What do you mean by "vessel"?		14 Jack Daniels Manhattans that Leigh presented you
16	Q. I had to say "vessel." I just felt like saying		15 with, which according to Exhibit 11 was for three
17	"vessel."		16 Jack Daniels Manhattans, placed at 8:40.
18	A. Is that the word we were not sure of last time?		17 MR. GILLIS: Objection. Did you say that she
19	Q. I'm showing you Exhibit 4 from the first day of your		18 served?
20	deposition, which, for the record, is the Bar		19 MR. FARAH: No; that Leigh served.
21	Operations Manual. Do you remember that document?		20 MR. GILLIS: I don't think there's any evidence
22	A. Yes.		21 that the first round was the round that she served.
23	Q. And on the page which we have Bates stamped Rare		22 I don't think there's any evidence that she said
24	05271, bar glassware is described. Do you see that?		23 she served that first round.
		Page 30	24 Q. Let me back up. According to Exhibit 11, Leigh
1	A. Yes.		Page 32
2	Q. What I want to know is, did you give to Leigh Chabot		1 placed an order for Table 52 for three Jack Daniels
3	the Jack Daniels Manhattans straight up in a		2 Manhattans at 8:40 p.m. Do you see that?
4	six-ounce cocktail glass, as is shown on this page of		3 A. Yes.
5	Exhibit 4?		4 Q. Do you agree with that, that that's what Exhibit 11
6	MR. GILLIS: Objection.		5 shows?
7	A. Yes.		6 A. Yes.
8	Q. Is there any question in your mind about that?		7 Q. Did you make that round of drinks?
9	A. No.		8 A. I don't recall.
10	Q. Okay. You didn't serve those Jack Daniels Manhattans		9 Q. Do you have any reason to believe you did not make
11	in the fourteen-ounce cobalt-blue-rimmed martini		10 that round of drinks?
12	glass, did you?		11 MR. GILLIS: Objection; asked and answered.
13	A. No. That was only for Margaritas.		12 A. I can't say for sure.
14	Q. Do you have any explanation as to why in the Longhorn		13 Q. Do you know whether you made the round of drinks for
15	bar manual it is referred to as a martini glass?		14 seven Jack Daniels Manhattans which Leigh placed for
16	A. I believe because of the shape and the design.		15 Table 52 at 8:51 p.m.?
17	Q. That's your guess?		16 A. Yes.
18	A. No. That would be exact. It says here as well --		17 Q. What is it about that order that leads you to know
19	specialty shaker Margaritas. We would never serve a		18 that you made that order?
20	martini in those.		19 A. I just remember the drinks on the tray.
21	Q. How far from the lip of the glass -- the Manhattan		20 Q. You remember seven drinks?
22	glass -- was it that you poured the drinks, the		21 A. Yes.
23	Manhattans?		22 Q. Had you ever made seven Jack Daniels Manhattans at
24	A. An inch below, and once the cherry goes in, it brings		23 one time for one table while you worked at the
			24 Longhorn, up to that point?

	Page 33	Page 35
1	A. No.	1 A. No.
2	Q. Had you ever made Jack Daniels Manhattans straight up 3 for any customer up to that point while you worked at 4 the Longhorn?	2 Q. Now, can you describe for me what you did when you 3 got ready to make the order for the seven Jack 4 Daniels Manhattans?
5	A. Yes.	5 MR. GILLIS: If you remember.
6	Q. Was it a drink you made often?	6 A. I put the seven glasses on the tray and then took a 7 rocks glass and filled it with ice, and then put the 8 alcohol in and strained it in and did that seven 9 times, and then put a cherry in each drink, and then 10 put her ticket on top.
7	A. No.	11 Q. Is that how you were trained to make a Jack Daniels 12 Manhattan?
8	Q. And when you worked at J.R.'s, is it accurate to say 9 that most of your customers were drinking beers?	13 A. Yes.
10	A. Yes.	14 Q. Who trained you to make a Jack Daniels Manhattan that 15 way?
11	Q. On the night of September 26, 2003, was there any 12 Longhorn mandated procedure in place for keeping a 13 tally of the number of drinks that had been served by 14 the service bar to a particular table?	16 A. Rebecca trained me at Longhorn.
15	A. No.	17 Q. As far as you know, did Rebecca train you in making 18 the Jack Daniels Manhattans in accordance with the 19 Bar Operations Manual?
16	Q. Was there any Longhorn mandated procedure in place, 17 as of September 26, 2003, that required communication 18 between the different bartenders as to how much each 19 bartender had made for service to a particular table?	20 A. Yes.
20	MR. GILLIS: At the service bar?	21 Q. As far as you know, is the procedure that you just 22 described for making Jack Daniels Manhattans 23 straight-up the procedure that is described in the 24 Bar Operations Manual?
21	MR. FARAH: At the service bar, yes.	
22	A. No, there was no set procedure.	
23	Q. You're clear, if I understand your testimony right, 24 and I don't want to put words in your mouth, you're	
	Page 34	Page 36
1	clear that you made the seven straight-up Jack 2 Daniels Manhattans that were made at 8:51; is that 3 right?	1 MR. GILLIS: Objection.
4	A. Yes.	2 A. I don't recall.
5	Q. You're unsure about whether it was you that made the 6 four Jack Daniels Manhattans that were ordered at 7 8:40; is that right?	3 Q. Have you ever made Jack Daniels Manhattans a 4 different way from the way you just described the way 5 you made those seven during that order?
8	A. Yes.	6 A. Yes, at different places I've worked.
9	Q. In either event, was there any means -- any way -- 10 for you to learn as of the time you made those seven 11 Jack Daniels Manhattans that four Jack Daniels 12 Manhattans had been ordered eleven minutes earlier?	7 Q. Before or after the Longhorn?
13	A. Are you asking if I knew, if I had a means of knowing 14 that?	8 A. Both.
15	Q. Yes, if you had a means of knowing that.	9 Q. While you were at the Longhorn, did you ever make a 10 Jack Daniels Manhattan a different way from the way 11 that you described you made the seven that night?
16	A. No.	12 A. No.
17	Q. Was there a computer in the service bar area that 18 provided you with that information?	13 Q. And it's your understanding that the way you made the 14 seven that night is the way that the Longhorn manual 15 requires it be made?
19	A. No.	16 A. As far as I recall, yes.
20	Q. Was there a policy in place at the Longhorn that 21 required service bartenders -- the various service 22 bartenders working on any particular night -- to 23 share with one another information about the drinks 24 that they had prepared for service to any table?	17 Q. After that night while you were at the Longhorn, did 18 you ever again make Jack Daniels Manhattans for 19 anyone?
		20 A. I would believe so.
		21 Q. Do you have a memory?
		22 A. I can't say specifically, no.
		23 Q. Did you in making the Jack Daniels Manhattans that night, did you use what's called Manhattan mix?
		24

	Page 37	Page 39
1	A. No.	1 How was that communicated to you?
2	Q. Can we agree that Exhibit 11 shows a charge for	2 A. By the way they were rung in. It would say "rocks"
3	Manhattan mix of fifty cents per Jack Daniels	3 on the ticket if they wanted on the rocks.
4	Manhattan?	4 Q. And when the request was communicated to you for the
5	A. Yes. It's sweet Vermouth.	5 Jack Daniels Manhattans, did it come to you as it
6	Q. Did you, in making the Jack Daniels Manhattans, use	6 appears on this page of Exhibit 11, that is, Jack
7	sweet Vermouth?	7 Daniels and a Manhattan mix, or was it a Jack Daniels
8	A. Yes.	8 Manhattan that was requested?
9	Q. How much did you put in each Jack Daniels Manhattan	9 A. Jack Daniels Manhattan mix.
10	during that first round of seven?	10 Q. As it appears in Exhibit 11; is that right?
11	A. A quarter ounce, probably.	11 A. Yes, without the prices.
12	Q. How much Jack Daniels did you put in each drink that	12 Q. Do you know what a mixing glass is?
13	you've described for that first round of seven?	13 A. A glass you mix drinks in.
14	A. It's a long time. Where I work now, they have bigger	14 Q. Do you know what a mixing glass is as it's referred
15	martinis. I believe it was two ounces, an ounce and	15 to in the Bar Operations Manual of the Longhorn
16	a half.	16 Steakhouse, as it was in effect on September 26,
17	MR. GILLIS: Don't guess.	17 2003?
18	A. I can't remember.	18 MR. GILLIS: Is that a particular page you're
19	Q. Do you remember testifying in the criminal trial of	19 referring to?
20	Mr. Southworth?	20 MR. FARAH: Yes. It's Bates stamped 299.
21	A. Yes.	21 Q. Take a moment and read that first part.
22	Q. Do you remember testifying in the criminal trial of	22 (Witness reviews document.)
23	Mr. Southworth that you put one ounce of Jack Daniels	23 Q. Do you see that procedure under "Stir and Strain" on
24	in each of those Manhattans?	24 page 299 of Exhibit 4?
	Page 38	Page 40
1	A. I guess so.	1 A. Yes.
2	MR. GILLIS: I don't want you to guess.	2 Q. Is that the procedure you followed in making the
3	A. I don't recall.	3 Manhattans that evening?
4	MR. GILLIS: If you don't have an answer, don't	4 A. Yes, minus the stirring.
5	guess.	5 Q. Did you fill a mixing glass two-thirds with ice?
6	A. I don't recall.	6 A. I filled a rocks glass with ice.
7	Q. As you sit here today, all you know about how much	7 Q. That was your mixing glass; is that right?
8	Jack Daniels you put in that round of seven was that	8 A. Yes.
9	you filled the rocks glass with ice and then Jack	9 Q. And did you fill it two-thirds with ice?
10	Daniels; is that right?	10 A. No. I usually filled them with ice to the top.
11	MR. GILLIS: Objection.	11 Q. And do you have a memory of after pouring the drinks
12	A. No.	12 from the glass in which you mixed them into the
13	Q. How much Jack Daniels did you put in each drink	13 individual glasses in which they were to be served
14	during that round of seven that you remember making?	14 during that round of seven that we've been talking
15	A. I don't recall what the Longhorn recipe was.	15 about, whether or not -- and after putting the
16	Q. So you don't have any memory, as you sit here, of how	16 cherries into each of the glasses -- whether or not
17	much you put in; is that right?	17 you added more bourbon to bring the level of the
18	MR. GILLIS: Objection.	18 liquid in any of the seven glasses to within
19	Q. Of how much Jack Daniels you put in any drink; is	19 one-quarter inch of the lip?
20	that right?	20 A. No.
21	MR. GILLIS: Objection.	21 Q. Do you have a memory of having done that?
22	A. It's whatever is in the manual.	22 A. No.
23	Q. By the way, how was the request made to you that the	23 Q. But it's your memory that they went out to the table
24	drinks be straight up as opposed to on the rocks?	24 with the liquid one-quarter inch from the lip; is

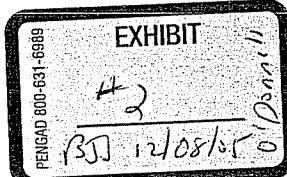
	Page 41	Page 43
1	that right?	1 conversation with Patty?
2	MR. GILLIS: Objection. It's your memory, not	2 Q. Patty; I'm sorry. Had anybody spoken to you about
3	what your practice was.	3 Southworth's criminal trial?
4	A. No, I don't recall the exact measurement.	4 A. No.
5	Q. We can agree, can't we, that the Longhorn Bar	5 Q. Did you know that he was charged with different
6	Operations Manual called for the drinks going out,	6 crimes?
7	that the liquid should be one-quarter of an inch	7 A. No.
8	below the lip; is that right?	8 Q. What did Patty say to you about that group of guys,
9	A. Yes.	9 best as you can recall it, when she had that
10	Q. And that typically is what you tried to do; isn't	10 conversation with you?
11	that right?	11 A. That she had heard that there was some sort of
12	A. Yes, or it would be lower than that but never above.	12 accident.
13	Q. But you want to serve a good drink to the patron,	13 Q. Did she say anything else?
14	don't you?	14 A. No.
15	MR. GILLIS: Objection.	15 Q. Did you think, at that point in time, that perhaps
16	A. Yes.	16 one or more of the patrons at Table 52 was under the
17	Q. The patron doesn't want to see the drink below the	17 influence of alcohol at the time that patron was
18	level that other people are getting the drinks, does	18 served his last drink?
19	he or she?	19 MR. GILLIS: Objection.
20	A. No.	20 A. No.
21	Q. Now, at any time since you learned through the	21 Q. At any time since Patty spoke to you about that group
22	conversation with Patty about that group of guys,	22 of guys, have you considered whether or not any of
23	what happened the night of September 26, 2003, the	23 those guys became intoxicated while a customer at the
24	morning of September 27, 2003, have you tried to	24 Longhorn?
	Page 42	Page 44
1	calculate in your mind the effects of the alcohol	1 A. No.
2	that was served to that table on the different	2 Q. Do you know, as you sit here now, without
3	patrons at that table?	3 conversations with your counsel or people working for
4	A. No.	4 your counsel, whether or not any of that group of
5	Q. Have you asked anyone to do that for you, other than	5 guys that Patty spoke to you about became intoxicated
6	as part of the defense of this lawsuit?	6 while a customer at the Longhorn?
7	A. No.	7 A. No.
8	Q. Now, you were visited by a state trooper the night	8 Q. Do you believe that any of that group of guys became
9	before you testified -- I think it was last	9 intoxicated while a customer at the Longhorn?
10	September -- in the Southworth criminal trial; is	10 A. No.
11	that right?	11 Q. Is it that you believe that they did not become
12	A. Yes.	12 intoxicated while a customer at the Longhorn?
13	Q. Had someone told you the state trooper was coming to	13 A. Yes.
14	see you?	14 Q. What is the basis for that belief?
15	A. No.	15 A. I didn't see any visibly intoxicated customers
16	Q. At what time of the day or night did the state	16 leaving that night, and they definitely would have
17	trooper arrive?	17 stuck out.
18	A. Night.	18 Longhorn is a family restaurant. It was not a
19	Q. Do you know what time?	19 type of place where people were getting fall-down
20	A. It was very dark in September, so after 8:00.	20 drunk.
21	Q. From the time you had the conversation with Sherri	21 So I would definitely remember that, as well as
22	until the state trooper arrived, had anybody spoken	22 other servers would probably have been talking about
23	to you about Southworth's criminal trial?	23 it.
24	MR. GILLIS: Objection. Do you mean the	24 Q. Is that what you were trained to look for in



LONGHORN
STEAKHOUSE

Bar Recipes

Revised 2002



LONGHORN STEAKHOUSE BAR OPERATIONS MANUAL-MASTER 5/02

BAR GLASSWARE

GLASSWARE

Libbey #15245
3 dozen per case
7 oz. Rocks

USAGE

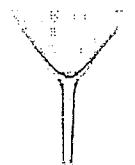
Liquor drinks w/no mixer
Drinks Served on the Rocks
Drinks Served with a Splash
Shooters with cream or Juice mixers

Libbey #15243
3 dozen per case
12 oz. Rocks



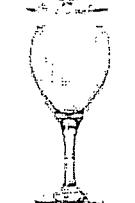
Juice Drinks
Collins
Sours
2 Liquor cream drinks
Drinks w/ soda gun mixer

Libbey #8455
3 dozen per case
6 oz. Cocktail Glass



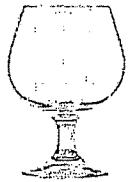
All chilled up cocktails
Martini, Manhattan, Gimlet & Gibson
Martinis Up
Sours Up
Margaritas Up

Libbey #3965
3 dozen per case
8.5 oz. Wine Glass



Wine/Champagne by the Glass

Libbey #3705
2 dozen per case
12 oz. Snifter Glass



Aromatic Liqueurs
Brandies
Cognac

LONGHORN STEAKHOUSE BAR OPERATIONS MANUAL-MASTER 5/02

NAME	METHOD	INGREDIENTS	GARNISH	CAT.
LONG BEACH ICED TEA 14 oz. Tall Rocks	Mix	2oz. Desert Island Tea Mix 4oz. Sweet/Sour Fill to 1/4" from top with 1 oz. Cranberry Juice.	Lemon squeeze	Liquor Special
LONG ISLAND ICED TEA 14 oz. Tall Rocks	Mix	2 oz. Desert Island Tea Mix 4 oz. Sweet/Sour Fill to 1/4" from top with 1 oz. Coke	Lemon squeeze	Liquor Special
JACKALOPE TEA 14 oz. Tall Rocks	Mix	1oz. Jack Daniels 1oz. Desert Island Tea Mix 4 1/2 oz. Longhorn Sweet n Sour Fill w/Coke	Lemon Wedge	\$5.25
RAZZMATAZZ TEA 14 oz. Tall Rocks	Mix	1oz. Dekuyper Razzmatazz 1oz. Desert Island Tea Mix 4 1/2 oz. Longhorn Sweet n Sour Fill w/Sprite	Lemon Wedge	\$5.25
LIMON-ADE TEA 14 oz. Tall Rocks	Mix	1oz. Bacardi Limon Rum 1oz. Desert Island Tea Mix 4 1/2 oz. Longhorn Sweet n Sour Fill w/Coke	Lemon Wedge	\$5.25
MAI-TAI 12 oz. Mug	Mix	1 1/4 oz. House Rum 3/4 oz. Triple Sec 2 oz. Sweet/Sour 1/2 oz. Grenadine 1 oz. Orange Juice 1 oz. Pineapple Juice Float 151	Orange, Cherry Flag	Liquor Special
MANHATTAN 7 oz. Rocks	Build	2 oz. House Bourbon 1/4 oz. Sweet Vermouth	Cherry	Call
MANHATTAN-DRY 7 oz. Rocks	Build	2 oz. House Bourbon 1/4 oz. Dry Vermouth	Lemon twist	Call
MANHATTAN PERFECT 7 oz. Rocks	Build	2 oz. House Bourbon Equal parts Sweet and Dry Vermouth	Lemon twist	Call
MANHATTAN UP 6 oz. Cocktail With ice, build in mixing glass, stir until glass is foggy. Strain into chilled cocktail glass.		2 oz. House Bourbon 1/4 oz. Sweet Vermouth	Cherry sword	Call

Leominster
227 North Main StreetServer: LEIGH 09/26/2003
Table 52/1 9:57 PM
Guests: 6
Reprint #: 5
#20043

Texas Tonion	5.99
Chowder-Cup (2 @2.49)	4.98
Chicken Fingers	4.99
Jack Daniels (17 @4.75)	80.75
Manhattan Mixer (17 @0.50)	8.50
25oz Bud Light (2 @3.99)	7.98
3oz The Renegade	10.99
Baby Back Ribs 1/2 Rack (3 @12.99)	38.97
12oz Prime Rib	14.99
Baby Back Ribs & Chicken	14.99

Complete Subtotal	193.13
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Sub Total	193.13
Tax	9.66

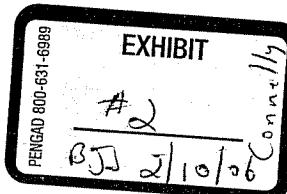
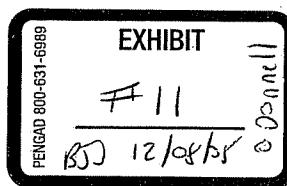
Total	202.79
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Cash	240.00
------	--------

Make plans to dine with us at
Longhorn Steakhouse.

We will make your dining
experience special.

--- Check Closed ---



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227 North Main StreetAudit Report
Date of Business: 09/26/2003

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12/01/2003 - 5:29 PM
5.2.5 180

Time	Type	Transaction
		0.00 Rice 12.99 1/2 Rack 0.00 FF 0.00 Slaw
07:59 PM	LOG OUT	Log Out Emp: 9882 LEIGH
07:59 PM	LOG IN	Log In Emp: 9882 LEIGH
07:59 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:10 PM	LOG IN	Log In Emp: 9882 LEIGH
08:10 PM	CLEARED ITEMS	Mgr 9882 LEIGH Emp 9882 LEIGH cleared \$ 1.89 from Table 63 Chk:40054 1.89 IBC [0.000000 Kg] 0.00 MUG [0.000000 Kg]
08:10 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 1.89 for Table 63 Chk:40054 1.89 IBC 0.00 No Mug
08:10 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:10 PM	LOG IN	Log In Emp: 9882 LEIGH
08:10 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:30066 Printed 1 time(s)
08:10 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:15 PM	LOG IN	Log In Emp: 9882 LEIGH
08:15 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:16 PM	LOG IN	Log In Emp: 9882 LEIGH
08:16 PM	APPLY PAYMENT	Mastercard on Table 52 Chk:30066 by 9882 LEIGH 57.22 Tip:0.00 ID:5511910207971723 Exp:0606
08:17 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:30066 Printed 2 time(s)
08:17 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 52 Chk:30066 for a total of 57.22
08:17 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:21 PM	LOG IN	Log In Emp: 9882 LEIGH
08:21 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 62 Chk:50036 Printed 1 time(s)
08:21 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:27 PM	LOG IN	Log In Emp: 9882 LEIGH
08:27 PM	ADJUST PAYMENT	Mastercard on Table 52 Chk:30066 by 9882 LEIGH Amt:57.22 Tip:0.00 => 12.00 ID:5511910207971723 Exp:0606
08:28 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:31 PM	LOG IN	Log In Emp: 9882 LEIGH
08:32 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 63 Chk:40054 Printed 1 time(s)
08:32 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 3.99 for Table 53 Chk:40051 3.99 Pie
08:32 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:37 PM	LOG IN	Log In Emp: 9882 LEIGH
08:37 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 53 Chk:40051 Printed 1 time(s)
08:37 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:40 PM	LOG IN	Log In Emp: 9882 LEIGH
08:40 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 35.70 for Table 52 Chk:20043 5.99 Tonlon 2.49 Chowder Cup 2.49 Chowder Cup 4.99 Fingers 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix

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227 North Main Street

Audit Report
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12/01/2003 - 5:29 PM
5.2.5.180

Time	Type	Transaction
08:40 PM	LOG OUT	3.99 25oz Bud Light
08:43 PM	LOG IN	Log Out Emp: 9882 LEIGH
08:43 PM	APPLY PAYMENT	Log In Emp: 9882 LEIGH
08:43 PM	APPLY PAYMENT	Cash on Table 63 Chk:40054 by 9882 LEIGH 50.00
08:43 PM	APPLY PAYMENT	Cash on Table 63 Chk:40054 by 9882 LEIGH 5.00
08:43 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 63 Chk:40054 Printed 2 time(s)
08:43 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 63 Chk:40054 for a total of 50.41
08:43 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 9.74 for Table 63 Chk:30084 4.99 25oz Wach 4.75 Sombrero
08:43 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 34.47 for Table 63 Chk:30084 16.99 14oz Strip CC 0.00 MR 0.00 FF 0.00 Caesar Salad 2.49 Side Mush 14.99 PR 12oz 0.00 MR PR 0.00 FF 0.00 Caesar Salad
08:43 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:44 PM	LOG IN	Log In Emp: 9882 LEIGH
08:44 PM	APPLY PAYMENT	Cash on Table 53 Chk:40051 by 9882 LEIGH 50.00
08:44 PM	APPLY PAYMENT	Cash on Table 53 Chk:40051 by 9882 LEIGH 20.00
08:44 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 53 Chk:40051 Printed 2 time(s)
08:44 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 53 Chk:40051 for a total of 56.28
08:44 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:51 PM	LOG IN	Log In Emp: 9882 LEIGH
08:51 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 36.75 for Table 52 Chk:20043 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix
08:51 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:55 PM	LOG IN	Log In Emp: 9882 LEIGH
08:55 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 10.37 for Table 53 Chk:20047 6.59 Fire Wrap 1.89 Sprite 1.89 Sprite
08:55 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:59 PM	LOG IN	Log In Emp: 9882 LEIGH
09:00 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 79.94 for Table 52 Chk:20043

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227 North Main Street

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5.2.5.180

Time	Type	Transaction
		10.99 Sm-Top 8oz 0.00 M 0.00 BP 0.00 E 0.00 Caesar Salad 12.99 1/2 Rack 0.00 FF 0.00 Slaw 14.99 PR 12oz 0.00 M PR 0.00 BP 0.00 E 0.00 Mix Green Sal 0.00 Ranch 14.99 1/2 Rack/ Chix 0.00 FF 0.00 Slaw 0.00 Mix Green Sal 0.00 Balsamic 12.99 1/2 Rack 0.00 FF 0.00 FF 12.99 1/2 Rack 0.00 FF 0.00 FF
09:00 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:08 PM	LOG IN	Log In Emp: 9882 LEIGH
09:09 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 29.98 for Table 53 Chk:20047 10.99 Sm-Top 8oz 0.00 Well Done 0.00 BP 0.00 S 0.00 Mix Green Sal 0.00 House 18.99 Lky/ Sam CC 0.00 Well Done 0.00 Seasonal Veg 0.00 Rice 0.00 Mix Green Sal 0.00 Italian
09:09 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:15 PM	LOG IN	Log In Emp: 9882 LEIGH
09:15 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 3.99 for Table 52 Chk:20043 3.99 25oz Bud Light
09:15 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:16 PM	LOG IN	Log In Emp: 9882 LEIGH
09:16 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:17 PM	LOG IN	Log In Emp: 9882 LEIGH
09:17 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 1 time(s)
09:17 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:21 PM	LOG IN	Log In Emp: 9882 LEIGH
09:21 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 21.00 for Table 52 Chk:20043 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix

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227 North Main Street

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5.2.6.180

Time	Type	Transaction
		4.75 Jack Daniels 0.50 Manhattan Mix
09:21 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:24 PM	LOG IN	Log In Emp: 9882 LEIGH
09:24 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 15.75 for Table 52 Chk:20043 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix
09:24 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:31 PM	LOG IN	Log In Emp: 9882 LEIGH
09:31 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 63 Chk:30084 Printed 1 time(s)
09:31 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:33 PM	LOG IN	Log In Emp: 9882 LEIGH
09:34 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 2 time(s)
09:34 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 3 time(s)
09:34 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:35 PM	LOG IN	Log In Emp: 9882 LEIGH
09:35 PM	APPLY PAYMENT	Visa on Table 63 Chk:30084 by 9882 LEIGH 46.42 Tip:0.00 ID:4491631021235627 Exp:1103
09:35 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:36 PM	LOG IN	Log In Emp: 9882 LEIGH
09:36 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 4 time(s)
09:36 PM	APPLY PAYMENT	Cash on Table 62 Chk:50036 by 9882 LEIGH 50.00
09:36 PM	APPLY PAYMENT	Cash on Table 62 Chk:50036 by 9882 LEIGH 10.00
09:36 PM	APPLY PAYMENT	Cash on Table 62 Chk:50036 by 9882 LEIGH 1.00
09:36 PM	APPLY PAYMENT	Cash on Table 62 Chk:50036 by 9882 LEIGH 10.00
09:36 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 62 Chk:50036 Printed 2 time(s)
09:36 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 62 Chk:50036 for a total of 61.56
09:36 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:40 PM	LOG IN	Log In Emp: 9882 LEIGH
09:40 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 53 Chk:20047 Printed 1 time(s)
09:40 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:40 PM	LOG IN	Log In Emp: 9882 LEIGH
09:40 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:44 PM	LOG IN	Log In Emp: 9882 LEIGH
09:44 PM	APPLY PAYMENT	Visa on Table 53 Chk:20047 by 9882 LEIGH 42.37 Tip:0.00 ID:4773550000020827 Exp:1103
09:44 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:46 PM	LOG IN	Log In Emp: 9882 LEIGH
09:46 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 5 time(s)
09:46 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:49 PM	LOG IN	Log In Emp: 9882 LEIGH
09:49 PM	ADJUST PAYMENT	Visa on Table 53 Chk:20047 by 9882 LEIGH Amt:42.37 Tip:0.00 -> 2.63 ID:4773550000020827 Exp:1103
09:49 PM	ADJUST PAYMENT	Visa on Table 63 Chk:30084 by 9882 LEIGH

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227 North Main Street

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12/01/2003 -- 5:29 PM
5.2.5.180

Time	Type	Transaction
09:49 PM	PRINT CHECK	Amt:46.42 Tip:0.00 => 7.00 ID:4491631021235627 Exp:1103
09:49 PM	CLOSE CHECK	Emp: 9882 LEIGH printed Table 53 Chk:20047 Printed 2 time(s)
09:49 PM	PRINT CHECK	Emp: 9882 LEIGH closed Table 53 Chk:20047 for a total of 42.37
09:49 PM	CLOSE CHECK	Emp: 9882 LEIGH printed Table 63 Chk:30084 Printed 2 time(s)
09:49 PM	ORDER ITEMS	Emp: 9882 LEIGH closed Table 63 Chk:30084 for a total of 46.42
		Emp 9882 LEIGH ordered \$ 3.78 for Table 63 Chk:20052
		1.89 Coke
		1.89 Coke
09:49 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:52 PM	LOG IN	Log In Emp: 9882 LEIGH
09:53 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 3.49 for Table 53 Chk:40069
		3.49 Heineken
		0.00 MUG
		0.00 Water
09:53 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:57 PM	LOG IN	Log In Emp: 9882 LEIGH
09:57 PM	APPLY PAYMENT	Cash on Table 52 Chk:20043 by 9882 LEIGH
		100.00
09:57 PM	APPLY PAYMENT	Cash on Table 52 Chk:20043 by 9882 LEIGH
		100.00
09:57 PM	APPLY PAYMENT	Cash on Table 52 Chk:20043 by 9882 LEIGH
		20.00
09:57 PM	APPLY PAYMENT	Cash on Table 52 Chk:20043 by 9882 LEIGH
		20.00
09:57 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 6 time(s)
09:57 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 52 Chk:20043 for a total of 202.79
09:58 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:58 PM	LOG IN	Log In Emp: 9882 LEIGH
09:58 PM	CLOSE CHECK	Emp: 9882 LEIGH Check Table 73 Chk:40070 was freed because it was empty.
09:58 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 6.59 for Table 53 Chk:40069
		6.59 Fire Wrap
09:58 PM	LOG OUT	Log Out Emp: 9882 LEIGH
10:03 PM	LOG IN	Log In Emp: 9882 LEIGH
10:03 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 4.99 for Table 53 Chk:40069
		4.99 Fried Cake
10:03 PM	LOG OUT	Log Out Emp: 9882 LEIGH
10:06 PM	LOG IN	Log In Emp: 9882 LEIGH
10:07 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 29.76 for Table 73 Chk:20054
		1.89 Diet Coke
		8.99 Sam Caes-D
		0.00 With Hot
		0.00 See Server
		16.99 PR 16oz
		0.00 Rare PR
		0.00 Seasonal Veg
		0.00 Caesar Salad
		1.89 Tea
10:07 PM	LOG OUT	Log Out Emp: 9882 LEIGH
10:10 PM	LOG IN	Log In Emp: 9882 LEIGH
10:10 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 24.98 for Table 73 Chk:20054
		12.49 Fried Dinner
		0.00 FF
		0.00 Slaw
		12.49 Fried Dinner

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY, AS)
SHE IS THE ADMINISTRATRIX OF THE)
ESTATE OF AWILDA SANTIAGO, ESSEX)
PROBATE COURT DOCKET #03P-2499AD1,)
P/P/A VERONICA ROSARIO AND)
CHRISTINA SANTIAGO, AND AS)
SHE IS THE ADMINISTRATRIX OF THE)
ESTATE OF JOSE SANTIAGO, BERLIN)
(CONNECTICUT))
PROBATE COURT, CASE #03-0713)
Plaintiff)
)
v.)
)
RARE HOSPITALITY INTERNATIONAL, INC.)
d/b/a LONGHORN STEAKHOUSE)
Defendant)

Civil Action #05-CV-10617MLW

AFFIDAVIT OF JUDE CONNELLY

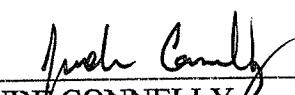
1. My name is Jude Connelly, I am an adult and a resident of Harvard, Massachusetts.
2. I was part of a group of young men who were customers at the Longhorn Steakhouse in Leominster, Massachusetts on September 26, 2003.
3. Another member of that group was Jeffrey Southworth.
4. Over the course of the evening, I observed Mr. Southworth being served and drinking various alcoholic beverages. I have already testified at deposition concerning my observations of Mr. Southworth in the matter of Nancy Rosario, individually and as administratrix of the Estate of Awilda Santiago, et al v. Jeffrey Southworth, et al, Middlesex Superior Court C.A. #03-4704. Portions of my deposition are attached hereto as Exhibit A.

5. In my deposition at pages 49-51, I testified that during the course of the evening at the Longhorn Steakhouse, Mr. Southworth seemed to be under the influence of the alcoholic beverages he was being served at the restaurant.

6. I also testified, at pages 42-44 of my deposition, that approximately one half-hour before we left the Longhorn, everyone at the table was loud, including Mr. Southworth, and that either a waitress or a manager of the restaurant came to us and asked us to be quiet.

7. At that time, when the table was asked to quiet down, Mr. Southworth was exhibiting all the signs of intoxication I testified about at pages 49-51 of my deposition.

Signed under the pains and penalties of perjury this 6th day of May, 2005.



JUDE CONNELLY

CERTIFICATE OF SERVICE

SUFFOLK, SS

May 12 2005

A copy of the Affidavit of Jude Connelly was today mailed, postage prepaid to Brian Voke, Esq., Campbell, Campbell, Edwards & Conroy, One Constitution Plaza, Boston, MA 02129.



Albert L. Farrah, Jr., Esq.

Albert Farrah

From: ECFnotice@mad.uscourts.gov
Sent: Tuesday, August 01, 2006 4:48 PM
To: CourtCopy@mad.uscourts.gov
Subject: Activity in Case 1:05-cv-10617-MLW Rosario v. Rare Hospitality International, Inc. "Motion for Protective Order"

*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was received from Gillis, Michael K. entered on 8/1/2006 at 4:48 PM EDT and filed on 8/1/2006

Case Name: Rosario v. Rare Hospitality International, Inc.
Case Number: 1:05-cv-10617
Filer: Rare Hospitality International Inc.
Document Number: 16

Docket Text:

MOTION for Protective Order and *Sanctions* by Rare Hospitality International Inc..(Gillis, Michael)

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: yes

Electronic document Stamp:

[STAMP_dcecfStamp_ID=1029851931 [Date=8/1/2006] [FileNumber=1521886-0]
[d3af6e134da9366b02366dd2da73fe9220bf4d1ef9687456500afa664326edd17ca0
26d7c53d44f69f51f182f95a7099933bd49f565d32ecca8fbef9c5b41ed]]

1:05-cv-10617 Notice will be electronically mailed to:

David R. Bikofsky dbikofsky@gillisandbikofsky.com

Albert L. Farrah alf@corwinlaw.com

Michael K. Gillis mgillis@gillisandbikofsky.com

Neil D. Schnurbach nschnurbach@gillisandbikofsky.com

1:05-cv-10617 Notice will not be electronically mailed to:

Albert Farrah

From: Albert Farrah
Sent: Tuesday, August 01, 2006 11:13 AM
To: Michael Gillis (mgillis@gillisandbikofsky.com)

I have still not received your motion for a protective order regarding Mr. DiNatale, despite your repeated, months long claims that you intend to seek a protective order. Are you waiving your objections to his deposition? It certainly seems so. Please get back to me asap on this, or better yet, forward to me your motion and supporting papers.

Albert L. Farrah, Jr., Esq.
One Washington Mall, 5th Floor
Boston, MA 02108
Phone: (617) 742-7766
Fax: (617) 742-2331
alf@corwinlaw.com
alf@afarrah.com
www.afarrah.com

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Albert Farrah

From: Albert Farrah
Sent: Thursday, July 27, 2006 11:25 AM
To: Michael Gillis (mgillis@gillisandbikofsky.com)

Thank you for accommodating me today. Since I won't be at your office, will you please fax and mail to me today your motion for a protective order re Di Natale. Also, what's your position regarding my motion to amend, and do you have good dates for Boullinne and Christina/Veronica?

I will be fed exing to you tomorrow Nancy's additional medicals and will call you with an update of her condition as soon as I have some information for you.

Albert L. Farrah, Jr., Esq.
One Washington Mall, 5th Floor
Boston, MA 02108
Phone: (617) 742-7766
Fax: (617) 742-2331
alf@corwinlaw.com
alf@afarrah.com
www.afarrah.com

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ALBERT L. FARRAH, JR.

COUNSELOR AT LAW

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alf@afarrah.com

www.afarrah.com

July 20, 2006

Michael Gillis, Esq.
Gillis & Bikofsky, P.C.
1150 Walnut Street
Newton Highlands, MA 02461

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc. d/b/a Longhorn Steakhouse
United States District Court Docket #05-CV-10617MLW

Dear Michael:

I am still waiting for your motion for a protective order with regard to Mr. DiNatale. When can I expect to receive it? Thank you.

Sincerely,

Albert L. Farrah, Jr.
ALBERT L. FARRAH, JR. (pmp)
pmp

FAX and REGULAR MAIL

cc: Nancy Rosario
Louis J. Farrah, II, Esq.

ALBERT L. FARRAH, JR.

COUNSELOR AT LAW

One Washington Mall • Boston, MA 02108

(617) 742-7766 • Fax: (617) 742-2331

alf@afarrah.com

www.afarrah.com

FAX TRANSMITTAL COVER SHEET

Date: July 20, 2006

To: Michael Gillis, Esq. (617-964-0862)
Louis J. Farrah, II, Esq. (1-978-682-3234)

From: Albert L. Farrah, Jr., Esq.

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc.

Pages (including cover sheet): 2

Comments:

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* * * COMMUNICATION RESULT REPORT (JUL. 20. 2006 11:18AM) * * *

TTI 617-742-2331

TRANSMITTED/STORED JUL. 20. 2006 11:16AM

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ALBERT L. FARRAH, JR.

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FAX TRANSMITTAL COVER SHEET

Date: July 20, 2006

To: Michael Gillis, Esq. (617-964-0862)
Louis J. Farrah, II, Esq. (1-978-682-3234)

From: Albert L. Farrah, Jr., Esq.

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc.

Pages (including cover sheet): 2

Comments:

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GILLIS & BIKOFSKY, P.C.

Attorneys At Law

1150 Walnut Street

Newton, Massachusetts 02461

Tel: (617) 244-4300
Fax: (617) 964-0862

Michael K. Gillis
David R. Bikofsky

Joseph C. Borsellino
Christopher M. Dailey
Rebecca L. Wilson
Neil D. Schnurbach

June 30, 2006

VIA FACSIMILE AND REGULAR MAIL

Albert L. Farrah Jr., Esq.
One Washington Mall, 5th Floor
Boston, MA 02108

**RE: Nancy Rosario, et al,
v. Rare Hospitality International, Inc., d/b/a Longhorn Steakhouse
C.A. No.: 05CV10617**

Dear Attorney Farrah:

In response to your letter of June 20, 2006, I would like to memorialize some points.

Firstly, as a reminder, I am still awaiting discovery responses from you, which were served upon you on February 14, 2006. In the past, I was forced to postpone the deposition of your client to give you sufficient time to respond to her interrogatories. If I do not receive these discovery responses by Friday, July 7, 2006 I will be forced to once again postpone your client's deposition. Despite your delay, in furnishing me with discovery responses, I will be furnishing you with such responses very shortly.

In terms of John DiNatale's deposition, Fed.R.Civ.P. 26(c) requires me to certify that I have in good faith conferred with you in order to resolve this discovery dispute absent a court order. I was awaiting response to my June 8, 2006 letter so that I could make such a representation to the Court. Since you have left me no choice, I will be filing this Motion for Protective order forthwith. If you would explain why you feel you are entitled to take Mr. DiNatale's deposition, perhaps we can resolve this dispute without having to go to court.

Lastly, on December 22, 2005, my office sent you responses to the Keeper of Records depositions we had received. We dispute the fact that there were a total of 82 such subpoenas, however, we will be sending your office further records of those responses shortly.

I would agree with your sentiment that these discovery matters should be resolved without having to go to court. I sincerely hope that you and your client will diligently

attempt to respond to the interrogatories propounded on February 14, over four and one half months after they were submitted to your attention.

Thank you for your courtesy and cooperation.

Very truly yours,



Michael K. Gillis
Neil D. Schnurbach

MKG:nhl

ALBERT L. FARRAH, JR.

COUNSELOR AT LAW

One Washington Mall • Boston, MA 02108

(617) 742-7766 • Fax: (617) 742-2331

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www.afarrah.com

June 20, 2006

Michael Gillis, Esq.
Gillis & Bikofsky, P.C.
1150 Walnut Street
Newton Highlands, MA 02461

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc. d/b/a Longhorn Steakhouse
United States District Court Docket #05-CV-10617MLW

Dear Michael:

we have several discovery matters that must be resolved. On January 27, 2006, plaintiff's request for production of documents was served on you. It is now 5 months later, and despite your repeated representations to me that you would furnish me the response to request for production of documents and responsive documents, I still have not received either. Is there some problem? Please get both the response and the documents to me immediately.

I have twice noticed the deposition of your investigator, Mr. DiNatale, and both times, based on your representations that you would seek a protective order, I have continued that deposition. On June 8, 2006, you wrote me a letter, a copy of which is enclosed, in which you represented you would file the motion for a protective order if I had not given you indications by June 12, 2006 that I was not going forward with his deposition. June 12, 2006 came and went, I gave you no such indications because I am intending to go forward with his deposition. Where is your motion for protective order?

Your predecessor and you served a total of 82 record keeper subpoenas. All have been returned. To date, I have received copies of very few of those records. We have spoken about this issue on numerous occasions in the past and I still have no sense of why you have not produced copies of all records you received.

I really want to resolve these issues without the need of moving in court. Please get back to me on all these matters immediately.

Sincerely,

Albert L. Farrah (pmp)
ALBERT L. FARRAH, JR.
pmp

FAX ONLY

cc: Nancy Rosario
Louis J. Farrah, II, Esq.
Dictated, but not read.

ALBERT L. FARRAH, JR.

COUNSELOR AT LAW

One Washington Mall • Boston, MA 02108

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FAX TRANSMITTAL COVER SHEET

Date: June 20, 2006

To: Michael Gillis, Esq. (617-964-0862)
Louis J. Farrah, II, Esq. (1-978-682-3234)

From: Albert L. Farrah, Jr., Esq.

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc.

Pages (including cover sheet): 3

Comments:

If you do not receive the correct number of pages, please call (617) 742-7766.

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* * * COMMUNICATION RESULT REPORT (JUN. 20. 2006 12:06PM) * * *

TTI 617-742-2331

TRANSMITTED/STORED JUN. 20. 2006 12:04PM
FILE MODE OPTION

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REASON FOR ERROR
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ALBERT L. FARRAH, JR.

COUNSELOR AT LAW

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alf@afarrah.com
www.afarrah.com

FAX TRANSMITTAL COVER SHEET

Date: June 20, 2006

To: Michael Gillis, Esq. (617-964-0862)
Louis J. Farrah, II, Esq. (1-978-682-3234)

From: Albert L. Farrah, Jr., Esq.

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc.

Pages (including cover sheet): 3

Comments:

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GILLIS & BIKOFSKY, P.C.

Attorneys At Law

1150 Walnut Street

Newton, Massachusetts 02461

Tel: (617) 244-4300

Fax: (617) 964-0862

Michael K. Gillis
David R. Bikofsky

Joseph C. Borsellino
Christopher M. Dailey
Rebecca L. Wilson
Neil D. Schnurbach

June 8, 2006

VIA FACSIMILE AND REGULAR MAIL

Albert L. Farrah Jr., Esq.
One Washington Mall, 5th Floor
Boston, MA 02108

**RE: Nancy Rosario, et al,
v. Rare Hospitality International, Inc., d/b/a Longhorn Steakhouse
C.A. No.: 05CV10617**

Dear Attorney Farrah:

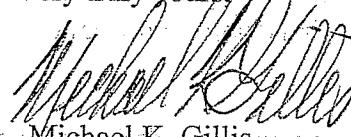
As you know, we oppose your effort to depose John DiNitale. When we spoke, I asked you your reasons for taking his deposition, and your response was that I could object but you still "wanted a shot at him".

As of this date, you have not articulated a right or a reason for deposing our investigator. Your request is well outside the bounds of the Federal Rules, in fact, it flies in the face of precedent in this Court. To require us to seek a protective order is inexcusable.

I will hold off until the end of business on Monday, June 12, 2006, to receive a letter from you stating that you are not going forward with Mr. DiNitale's deposition. If I do not receive the letter, I will have no choice but to file a motion for a protective order. Since you have not articulated any legitimate or recognizable need for the deposition, I will be seeking attorneys' fees and costs associated with the motion.

Thank you for your courtesy and cooperation.

Very truly yours,



Michael K. Gillis

MKG:jal

GILLIS & BIKOFSKY, P.C.

Attorneys At Law

1150 Walnut Street
Newton, Massachusetts 02461

Tel: (617) 244-4300
Fax: (617) 964-0862

Michael K. Gillis
David R. Bikofsky

Joseph C. Borsellino
Christopher M. Dailey
Rebecca L. Wilson
Neil D. Schnurbach

Albert L. Farrah Jr., Esq.
One Washington Mall, 5th Floor
Boston, MA 02108

June 2, 2006

RE: Nancy Rosario, Individually, as Administratrix of the Estate of Awilda Santiago, as Administratrix of the Estate of Jose Santiago, as Mother and Next Friend of Veronica Rosario, A Minor, and Christina Santiago, A Minor.
v. Rare Hospitality International, Inc., d/b/a Longhorn Steakhouse
C.A. No.: 05CV10617

VIA FACSIMILE AND REGULAR MAIL

Dear Attorney Farrah:

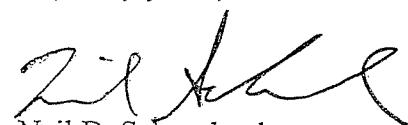
This letter is to confirm that as per our conversation of Thursday, June 1, 2006, the deposition of John DiNatale scheduled for Monday, June 5, 2006 will be postponed until a later date to give our office an opportunity to file a Motion for a Protective Order.

The deposition of William "Todd" Currie also scheduled for Monday, June 5, 2006 will go forward as planned.

If you have any questions, please feel free to contact my office.

Thank you for your courtesy and cooperation.

Very truly yours,


Neil D. Schnurbach

NDS:nhl

ALBERT L. FARRAH, JR.

COUNSELOR AT LAW

One Washington Mall • Boston, MA 02108

(617) 742-7766 • Fax: (617) 742-2331

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May 2, 2006

Michael Gillis, Esq.
Gillis & Bikofsky, P.C.
1150 Walnut Street
Newton Highlands, MA 02461

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc. d/b/a Longhorn Steakhouse
United Stated District Court Docket #05-CV-10617MLW

Dear Michael:

I forwarded to you last week a Notice of Taking Deposition of John DiNatale. Pursuant to the agreement I reached with Neil Schnurbach of your office, my office will not be required to subpoena Mr. DiNatale and you will file a motion for protective order which I will oppose. Furthermore, if that motion is denied I will not need to subpoena Mr. DiNatale. Thank you for your consideration in this matter.

Sincerely,

Albert L. Farrah, Jr.
ALBERT L. FARRAH, JR.
pmp

cc: Nancy Rosario
Louis J. Farrah, II, Esq.